TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906

No. ~~177~~ 89.

THE NATIONAL COUNCIL, JUNIOR ORDER UNITED AMERICAN MECHANICS OF NORTH AMERICA, ET AL., PLAINTIFFS IN ERROR,

vs.

THE STATE COUNCIL OF VIRGINIA, JUNIOR ORDER UNITED AMERICAN MECHANICS OF THE STATE OF VIRGINIA.

IN ERROR TO THE SUPREME COURT OF APPEALS OF THE STATE OF VIRGINIA.

FILED JULY 26, 1905.

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1 In the Supreme Court of Appeals of Virginia, at Richmond.

THE NATIONAL COUNCIL OF THE JR. O. U. A. M. OF NORTH AMERICA, a Corporation; E. L. BOOTON, JAMES R. MANSFIELD, E. H. HEATON, GEORGE B. SPROW, JR., J. E. BOEHM, O. B. HOPKINS, JAMES S. GROVES, E. R. BOYER, C. P. BLUNT, W. J. GIBSON, J. R. JEWELL, B. B. BOTT, and J. R. N. CURTIN

vs.

THE STATE COUNCIL OF VIRGINIA, JR. O. U. A. MECHANICS OF THE STATE OF VIRGINIA, a Corporation.

To the Honorable Judges of the Supreme Court of Appeals of Virginia:

Your petitioners are the National Council of the Junior Order United American Mechanics of North America and the individuals above named. The said individuals, except the three last named, were, with the aforesaid National Council, made parties defendant, as officers of a subordinate body of the National Order of the Junior Order United American Mechanics called the State Council of Virginia, Jr. O. U. A. Mechanics of the State of Virginia. The other three individuals were made parties as members of said subordinate body.

Your petitioners represent that they are aggrieved by a decree entered against them by the Chancery Court of the City of Richmond on the 21st day of July, 1904, in a cause therein pending in
2 which they are defendants, and in which the plaintiff was the above named, "The State Council of Virginia, Jr. O. U. A. Mechanics of the State of Virginia, a Corporation."

Your petitioners pray an appeal and a writ of supersedeas to said decree, and for such relief as to your Honors may seem meet from the record accompanying this petition.

Statement of Case.

The record shows that there are two bodies claiming to be entitled to the use of the name The State Council of Virginia, Jr. O. U. A. M. of the State of Virginia; to the insignia, regalia and ritual of the Order; to the right to create subordinate or local Councils of the Order, and to the control over such subordinate Councils and the individual members. Those claims constitute the issues of this litigation and present the rights therein involved. Out of the presentation of those claims and rights several important legal questions arose in the lower court, and will be here again presented for determination.

The plaintiff below based its claim upon a charter granted by the Legislature of Virginia at the request of certain officers of the then State Council. The State Council, whose officers were made parties defendants, is a subordinate body of the National Order, created by a social and contractural charter, granted by the National Council

of the Order, to those subordinate or local Councils which had refused to join in the revolt and had remained faithful to the Order. Upon this it based its claim to be the only true and rightful State Council.

The record discloses the following facts, which bear upon the main issue above stated, and the less prominent questions bearing upon or growing out of that issue. Before 1869 there was no National Council. Previous to that year there existed three State Councils—one in Pennsylvania, one in Delaware, and one in New Jersey. In that year those three State Councils, by agreement, created a National Council and prescribed its powers. After such creation these three State Councils surrendered and abandoned their independent existence and powers and took charters for themselves respectively from said National Council, so created, and recognized that they subsequently existed and exercised all their powers subject to the National Council. At that time there was no State Council, nor any subordinate Councils, in Virginia. Between that date and 1893 charters were granted Councils in many other States in the United States, among which was the State Council of Virginia.

3 The State Council of Virginia was created and derived all the powers which it has claimed and exercised until the present controversy under and by reason of the State Council charter so obtained. See. MS., pp. 142–143.

In 1892 the National Council determined that it should become a body incorporated by law, and in 1893 it was so incorporated under the laws of Pennsylvania, a copy of which charter is in the record. See p. 143. Since such incorporation the National body has existed solely as an incorporated body under its charter. See p. 143. By its charter the National Council was created with certain powers and objects in the following language:

"Be it known that the subscribers, who with their associates comprise the National Council of the Junior Order of United American Mechanics, the supreme head of that Order in the United States of North America, which has been organized for *beneficial and protective* purposes, and among *other* things the advancement of the following objects, viz:—

First. To maintain and promote the interests of Americans and shield them from the depressing effects of foreign competition.

Second. To assist Americans in obtaining employment.

Third. To encourage Americans in business.

Fourth. To establish a sick and funeral fund.

Fifth. To maintain the public school system of the United States of America and to prevent sectarian interference therewith and to uphold the reading of the Bible therein—

are desirous of being incorporated," etc., etc. See p. 25.

At the annual meeting of the National Council, held 1894 in Asheville, North Carolina, there was adopted a Constitution of the National Council and certain General Laws. See pp. 31 to 55.

Among the provisions of said Constitution will be found the following, on pp. 54 and 55:

Article XXV. of that Constitution reads:

"SEC. 1. This Constitution or the General Laws of the Order shall not be altered or amended oftener than once in five years, unless by a two-thirds vote of the members present at a regular session called for the purpose; provided, all alterations or amendments shall be in writing, signed by two or more members of the National Council, and shall be referred to the Committee on Law before final action is taken thereon.

4 SEC. 2. All proposed alterations or amendments shall be examined by the Committee on Law and reported to the National Council at its next session, together with such further amendments and recommendations as may be deemed necessary to preserve the consistency and sense of this Constitution and the General Laws; provided, that when the National Council refers the General Laws or Constitution of the National Council to a committee for revision, such reference shall be sufficient notice of any proposed alteration or amendment.

SEC. 3. The action and recommendation of the committee shall be published at least thirty days prior to the next session of the National Council, when final action may be taken."

After the said meeting in Asheville it continued to have annual sessions at different places. At the annual session in 1896 the following amendment to the charter was adopted and laid over: "Amend Art. 11, National Council Constitution, by adding a sixth object: 'To establish or erect an Orphans' Home as a home for the orphans of deceased members of the Order, and to maintain the same.'" At the next meeting, in 1897, it was moved and carried that at the last night meeting in September following, the subordinate Councils should vote thereon. At the next session at Louisville, 1898, it was declared that a majority had voted for it and that it had been carried. Subsequently an amendment to the *charter* was obtained inserting that specific object.

At the same meeting in 1898, during the consideration of certain specific amendments to the Constitution of the National Council, reported by the Law Committee, it was moved and adopted to refer the General Laws Constitution of the National Council and of subordinate Councils under jurisdiction of the National Council to the incoming Law Committee "*for general revision.*"

And it was also moved and adopted, while said specific amendments were still under consideration, that "in consideration of the National Council having referred the laws to the incoming Law Committee for general revision, that all further amendments be laid over."

It is among the agreed facts that "the requirement of Art. XXV. of the Constitution, that the amendment shall be referred to the Committee on Law before final action shall be taken thereon, was fully complied with, as shown by the proceedings of the Louisville session of 1898 of the National Council." See pages 55*a* and 145.

5 In 1899 the annual session was held in Minneapolis. At that session the Law Committee, to whom had been referred the General Laws, the Constitution of the National Council

and the subordinate Councils for a general revision, made its report, which embraced a draft of General Laws and Constitution of National Council. See p. 55*a*. It was then and there adopted.

The power to then and there adopt the same was under said Article XXV. of the Constitution above quoted.

It is admitted that five years had elapsed since the last general revision. See p. —.

It was the adoption of that Constitution at that time and the objections to certain provisions in the new Constitution which led to the revolt of the subordinate Councils, which were subsequently formed into the plaintiff corporation.

Under the jurisdiction of the National Council subordinate Councils were first organized in Virginia, and when a sufficient number were in existence a State Council was formed, to which a charter was duly granted. Under such a charter the old State Council operated until March, 1900, when the complainant otained a legislative charter from the General Assembly, under which it now claims to exist and exercise its powers. A copy of the form of a charter granted to the State Councils by the National Council is in the record. See p. 129. By the terms of such charter State Councils are given the power to act as a State Council of the Order, to grant charters to subordinate Councils, to make laws, provided the State Council always acts in conformity to the laws and usages of the Order and in obedience to the National Council. P. 130.

A majority of the members of the State Council of Virginia was dissatisfied with the Constitution adopted at Minneapolis. That Council held its annual meeting at Cape Charles in October, 1899, and adopted certain resolutions setting forth its objections and dissatisfaction. The chief grievances are set forth in the bill of complaint in this cause, and will be noticed when the pleadings are stated.

At that meeting, however, the then State Council recognized the provision of the Minneapolis Constitution requiring the reading of the charter of a State Council, at the opening of its annual meeting. Having lost its old charter, it obtained a copy thereof *after the Minneapolis session.*

A few months thereafter certain officers of the then State Council asked for a charter from the Legislature for themselves "and *all other members* of the said State Council of Virginia." P. 22.

It was granted "by the style, name and title of the State Council of Virginia, Junior Order of United American Mechanics of
6 the State of Virginia."

The act declares it to "be the supreme head of the Junior Order of American Mechanics in the State of Virginia." It was given the usual corporate powers.

It also provides "that the said corporation shall have full and *exclusive* authority and jurisdiction to grant charters to subordinate Councils, Junior Order United American Mechanics, in the State of Virginia, with power to revoke the same for cause; to make constitutions, by-laws and rules of order, as said corporation may deem just and proper for the government of said subordinate Councils."

It next provides for the election of officers, and declared that the

officers of the then State Council "shall continue in their respective stations until an election shall be had under this act."

It then declares "the objects of this corporation shall be to maintain and promote the interest of Americans, to assist them in obtaining employment, to encourage them in business, to afford relief to the members thereof and their families in case of accident, sickness or death, to defray the expense of their funerals, or such other cases of distress as shall be defined by the Constitution, By-Laws, Rules and Regulations of this Corporation."

It will be seen from this statement of "objects" of the complainant's existence that it deliberately refrained from mentioning the two principal and all-important "objects" of the National Order, and the defendants, viz., to "shield them (Americans) from the depressing effects of foreign competition," and "to maintain the public school system of the United States of America and to prevent sectarian interference therewith and to uphold the reading of the Bible therein." P. 24.

Thus, while abandoning the prime and fundamental principles of the Order, it demanded that it be the supreme head of the Order in this State.

This charter, granted at the request of a few men, given to them "*and all other members* of the said State Council of Virginia," remained unaccepted by any body until the called meeting of the then State Council, held at Richmond on March 14, 1900. It was there adopted by a vote of 86 ayes and 17 noes. P. 127. Twenty-four local Councils out of one hundred and forty-seven refused to accept the charter. P. 154.

The acceptance of such a charter necessarily put those accepting it in open revolt to the National Council. By the charter it refused to recognize the superior authority of the National Council. It proclaimed itself "the supreme head" in this State. It claimed "exclusive" authority to create subordinate lodges. It claimed
7 such authority, not as desired from the National Council, but from the legislative charter. It proclaimed itself an independent organization. It refused to obey the orders of the National Council or those officers representing it. When summoned before the National judiciary to answer for such conduct it ignored that authority. P. 149. It ignored its decree declaring the State charter, still held by the members in revolt, to be cancelled. It has ever since claimed to be an independent body and the supreme head of the Order in this State. See bill of complaint.

After revoking the charter of the old State Council, the National Council, recognizing the local Councils which had remained true and faithful to the National Council, granted them a charter for a State Council on March 2, 1901. See p. 150. Under that charter a State Council was formed—now exists—and it is the officers of that State Council which the complainant seeks to have enjoined from acting, claiming that it alone has the right to the name because of its legislative charter.

It is true that the old State Council, at its Cape Charles session, adopted a resolution to appoint a committee to seek an adjustment of the differences existing between the old State Council and the

National Council. But on that committee the minority of the old State Council, which was opposed to antagonizing the National Council, had no representation. The committee appointed went to Philadelphia, and joined other similar committees in presenting the petition insisting upon many radical changes. See p. 147.

Prior to the Philadelphia session of the National Council the then National Councillor, learning that the State Council would probably not send its representatives to that session, addressed the then State Councillor, requesting that the State Council be represented, assuring his every effort to obtain their admission. See pp. 147-8.

The Executive Board of the old State Council, instead of permitting the representatives, whose expenses were to be paid by the National Council (if admitted) to attend, addressed the representatives, requesting that they would not attend, and in said letter stated that they had lost their right to admission in the National Council. Notwithstanding this action, two of the representatives from Virginia, being in sympathy with a minority of the State Council, did attend the Philadelphia session, and were admitted to the floor of the National Council. P. 148. The only excuse offered for the behavior of the others was that the representatives who did not attend had no assurance, other than the foregoing letter from the National Councillor, who had no right to admit them, that they would be admitted; that they had been suspended, and if
8 not admitted they would have had their own expenses to pay.

Since obtaining the legislative charter, the complainant or rebellious State Council has claimed the right to retain the name, private work, emblems and regalia claimed by the defendant State Council, and claims the right to erect itself into a body independent of and to the exclusion of the present National Council. It has refused absolutely to recognize the National Council and has declared itself an independent organization.

The principal officers of complainant bear the appellations of State Councillor, Vice State Councillor, State Treasurer, and Junior State Councillor, and that the defendant State Council also elect officers with the same appellations and duties, whose names are correctly stated in the bill. The appellations are the same that have always been used by the State Council of Virginia, under the charter granted by the National Council. The complainant has continued to use and is now using the *ritual formerly* used by the old State Council, with such changes as have been caused by the existing condition of affairs, arising from the dissatisfaction with the National Council. P. 141.

Among the agreed facts is the following admission. P. 141:

"That both the plaintiff and defendant State Councils have granted and intend to grant charters to subordinate Councils in the State of Virginia and the City of Richmond; that each, by their organization and existence, are obtaining members and *membership fees and dues*, which one would obtain and receive, but for the existence of the other; and that both the complainant State Council and the defendant State Council are respectively claiming to the outside world that it is the only true and lawful State Council of Virginia Jr. O. U. A. M."

It is also an admission in the record:

That if plaintiff is entitled to the rights asserted in the bill the acts of the defendant interfere with and impair those rights, and it is also admitted that if defendants are entitled to the rights asserted in the answer, the acts of the plaintiff interfere with and impair those rights." See p. 141.

Such being the conflict between the complainant State Council and the National Council and the officers and members of the defendant State Council, the former filed its bill of complaint in the Chancery Court of the City of Richmond on 3rd Monday, July, 1901.

9 *Pleadings.*

The pleadings in the cause consist of the bill, the answer of the National Council, and the answers of the individual defendants.

Bill.

The allegations of the bill of complaint are as follows:

1st. That it is a corporation created by the aforesaid act of the Legislature, a copy of which is filed.

2nd. It states [illegible]jects" for existence as set forth in said act.

3rd. That before its existence as such corporation, it had existed under the same name and was subject "by virtue of the customs of the Order to the control of the National Council." "as far as the latter acted within the scope of its objects, charter, constitution and general laws, but no further."

4th. That in 1869 the State Councils of Pennsylvania, New Jersey and Delaware had erected the National Council, "delegating to it certain rights and powers, within which is should be regarded and respected as the Supreme Head of the Order." That in 1893 the National Council became incorporated under the laws of Pennsylvania, and filed a copy of that charter.

5th. It then alleges the objects of the National Council as the objects *specifically* mentioned in said charter. It omitted to state — that charter that the National Council was "for beneficial and protective purposes and among other things," for those specific objects.

7th. That in 1897 the specified objects were enlarged by a provision, as follows: "Sixth. To establish or erect an Orphan Home for the orphans of deceased members of the Order and to maintain the same."

8th. That in 1869 the National Council adopted a constitution and general laws, which was intended as the fundamental organic law of the Order, and so considered by the Order. It filed no copy of such constitution or general laws.

9th. That for the promotion of the Order then all State Councils were subject to the control of the National Council, within
10 the scope of its objects, charter, constitution and general laws.

10th. That there are also subordinate Councils, subject to the immediate control of the State Council of a State; and where

there — no State Council to the immediate control of the National Council, "which, within the limits aforesaid, is the Supreme Head of the Order."

11th. That the said six objects are the only legitimate objects of the Order, and that the complainant had never recognized any other. That they can only be altered as provided by the Constitution, and that the constitution could only be altered in the constitutional method presented.

12th. That the only constitutional method by which the constitution could be altered before or at the Minneapolis Convention is by Article 2, section 2, of the constitution adopted at Asheville in 1894. It then quotes that section.

13th. It then quotes in full Art. XXV of that constitution. (But it makes no comment upon nor did it attempt to construe the last mentioned article. After quoting it, it simply ignores the emphatic reservation of the power therein set forth in plain language to have every five years a general revision of the constitution and general laws by a reference to and report by the Law Committee, and an adoption by the National Council.)

14th. That the National Council is not "in any strict and accurate sense a representative body." It then argues to support this allegation by saying that the Past National Councillor and Past State Councillors retain their membership in the National Council.

15th. It alleges that on two occasions before the Minneapolis session, the National Council attempted to amend the objects by addition of an insurance branch, but failed because a majority of the members of the Order voted against the proposition, when submitted to them.

16th. That at Louisville session of the National Council that body referred to the Law Committee "for general revision" the general laws and constitution of the National and subordinate Councils, and that said committee made its report at the Minneapolis session in 1899.

11 17th. It alleges, "without going into details," that at the last named session that report, "or rather a supplemental report of a "radical and revolutionary character," was adopted, without compliance "with aforesaid constitutional requirements, and in violation of Mathias Manual, the book on parliamentary practice, recognized by Article 22 of the constitution." It proceeds to specify the alterations.

18th. It alleges, as one of the "radical and revolutionary" measures, that by said constitution an "attempt" was made to foist an insurance branch upon the Order. That $5,000.00 of the funds of the Order were illegally appropriated to the insurance branch. It then quotes section 2 of Law 31 of the General Laws as proving the illegality of such appropriation. It then asks the attention of the court to Article 12 of the Minneapolis constitution as bearing on the subject and to certain pages of the official report of that session.

19th. It next alleges that the changes in the general laws as to regalia were illegal, because by Article 9 of section 10 of the general laws previously in force no change could be made in the laws relating

to the "regalia" unless approved by a majority vote of the members of the Order. (Of course, by such a claim, it again ignored the powers reserved in the constitution by said Art. XXV for a general revision every five years.)

20th. It then cites that certain sections of the former general laws had been omitted, especially section 10, requiring a vote of the membership of the Order for a change.

21st. It then alleges as the third "radical and revolutionary" measure, the creation of a National Judiciary, before whom would be tried acts of insubordination, violations of obligations, and appeals, instead of having the time of the National Council consumed in such hearings. It complained that the members of the judiciary were made appointive, instead of being elected by the National Council.

22nd. As its fourth charge it alleged a change in the basis of representation in the National Council. It showed how the representation of certain States was decreased and others enlarged.

23rd. It then repeats its objection that the changes were made without submitting the alterations to a vote of the members of the Order, and in violation of the several sections of said Art. XXV.

12 24th. It then asserts that the complainant State Council had "exhausted all lawful means within the Order to obtain a redress of the aforesaid grievances and others not enumerated but without success. It then cites the action of itself and others at the Philadelphia session set forth in the record.

25th. It says that at the session of 1892 the National Council adopted a resolution to have itself incorporated, and recommended the incorporation of the State Councils. That many State Councils were incorporated. It then says that the *State Council,* "through its executive officers," applied for and obtained a charter from the Virginia Legislature. (The facts show that the executive officers took the step without any authority from the State Council. It fails to state that no State Council was expected to ask, or ever did ask, for a charter declaring it the Supreme Head of the Order in a State.)

26th. It then tells of the acceptance of the legislative charter by the State Council. It then calls attention of the court to certain features of that charter.

"First. It embraces *all* of the members of the State Council of Virginia Junior Order United American Mechanics.

Second. Your orator is made the Supreme Head of the Order in Virginia.

Third. Your orator is given full and exclusive authority and jurisdiction to grant charters to subordinate Councils," &c. It then claims that "the small minority which voted against the acceptance apparently acquiesced in the vote of the majority." (A statement absolutely without any foundation whatever.)

27th. It then alleges that the individual defendants and others unknown, in league with the National Council, organized "on or about March 2, 1901, at Alexandria, Virginia, a new State Council of Virginia by the same name, or substantially the same name, as

that of your orator." (It omitted to state that the complainant had been tried by the National Judiciary and adjudged guilty of insubordination and that its charter from the National Council revoked, and that the Council created at Alexandria had been created under the sanction of the National Council.)

28th. It claims that the State Council so created by the National Council denies the validity of the complainant's charter—was trying to injure the complainant.

13 29th. It then alleges that the new State Council was organized for the same purposes or substantially the same purposes for which "your orator" existed as an unincorporated organization and was afterwards chartered. (Yet it knew that the purposes were plainly different, as shown above.)

30th. That the new State Council is wrongful and illegal and impairs the rights of the complainants. It then again claims to be the Supreme Head of the Order in Virginia.

31st. That the new State Council intends to grant charters to subordinate Councils, and seeking in other ways to usurp the exclusive rights and functions of the complainant. That it is attempting to collect money to which the complainant is entitled, and which would otherwise be paid to the complainant, and for that purpose is using the name of your orator.

32nd. It then alleges that a large number of the members of the Order in Pennsylvania, New York, New Jersey and the District of Columbia is contending for rights such as the complainant is asserting. (The fact being that the members in no one of those localities were claiming any such rights of supremacy, but merely denying the validity of the Minneapolis Constitution. Since the filing of the bill the Supreme Court of Pennsylvania has rendered a decision upholding its validity. So has the Supreme Court of New York. In neither New Jersey nor the District of Columbia has the question been decided by any court.)

33rd. It then alleges that the new State Council has only twenty-four subordinate Councils out of one hundred and forty-seven subordinate Councils, and 2,300 members out of 10,000 members in this State. Also that the new State Council is attempting to collect taxes and dues to which the complainant is entitled.

34th. It gives the titles of the principal officers of the complainant and says that they are the same which were used by the old State Council, and that they are the same as those of the new State Council.

35th. That the complainant adopted a seal, of which it attaches to the bill of complaint an impression, and that the new State Council is using the same or substantially the same seal. (It omitted to state that it is the same or substantially the same as that that was used by the old State Council, to whose powers and rights

14 the new State Council succeeded by the action of the National Council.) And then makes a comparison between the numerical strength of the complainant and the new State Council in the City of Richmond.

The bill then sets forth the following prays:

1st. That the defendants be made to answer.

2nd. That the new State Council be declared illegal.

3rd. That the complainant's legislative charter be declared valid.

4th. That the defendants be enjoined from continuing the use of the name State Council of Virginia Junior Order United American Mechanics of the State of Virginia, or any other names of like import, likely to be taken for that of your orator.

5th. Also be enjoined from the use of the seal.

6th. Also be enjoined from carrying out the objects for which they were organized.

7th. Also be enjoined from using the name of the complainant or any other name of like import in the pursuit of any of the objects for which the complainant was chartered.

8th. Also be enjoined under such name or name of like import from granting charters to subordinate Councils, from representing themselves to subordinate Councils as the head of the Order in this State, and from interfering in any way with the pursuit by the complainant of its objects and purposes.

9th. Be also enjoined from designating their officers by the title set forth in the bill.

10th. For general relief.

Answer.

To the bill of complaint the National Council filed its answer in which it appears:

1st. It denied that its powers were delegated to it by the State Councils of Pennsylvania, New Jersey and Delaware. It described its origin as above set forth in the Statement of the Case." It also stated the creation of the State Council of Virginia. It filed a copy of the Pennsylvania charter.

2nd. It admits that the bill correctly stated the specific objects of the Order, and denied that any material change in them was made by the Constitution adopted at Minneapolis. It denied that the enumerated objects are the only legitimate objects of the Order.

3rd. It denied that the Constitution in force before the
15 Minneapolis session was the fundamental law of the *"Order."*
It claimed that it was, until amended, the governing law of the National Council, while the General Laws were the fundamental laws of the State and subordinate Councils.

4th. It alleged that the State Council, existing before the organization under the legislative Charter, recognized the Minneapolis Constitution by obtaining a copy of its Charter after the Minneapolis session, and obeying the law there adopted of reading its Charter at the opening of its session at Cape Charles.

5th. It alleged that since the session of the State Council at Cape Charles a majority of that Council had been in insubordination to the National Council, although it still continued to hold itself out to the world as a part of the National Order, and as upholding the objects of the Order as formulated at Minneapolis.

6th. It alleged that the action of the National Council at Minne-

apolis had been declared by the Supreme Court of Pennsylvania as valid and binding on the Order. It filed a copy of the opinion of that court.

7th. It denied that the objects of the Order could not be altered unless proposed in writing, and that after adoption by the National Council had to be approved by a majority vote of the members of the Order. It insisted that Art. 2, sec. 2, of the Constitution did not limit the power of "general revision" given by Art. XXV of the Constitution. That by the latter article the power is reserved for a "general revision" every five years, with only one restriction, viz: that it "shall be referred to the Committee on Law before final action shall be taken thereon."

8th. It alleged that the National Council is a representative body elected from the members of the Order, and governed by representatives from State Councils and Past National and Past State Councillors.

9th. It denied that the alterations made at the Minneapolis session were radical and revolutionary, or that they were adopted in violation of the rules of parliamentary practice.

10th. It alleged that the sum of $5,000.00 was not a gift, but a loan to Beneficiary Degree, and that the same was not illegal.
16 That that branch body was not to be aided by the per capita tax, and that no one was obliged to become a member. That sec. 2 Law XXXI. only applied to the funds of a subordinate Council.

11th. It denies that alterations in General Laws as to "regalia" of the Order was illegal. It insisted that the National Council could not by general laws limit the powers given it by its Charter from the State of Pennsylvania. It also claimed that under said Article XXV. it had the right to make such alterations at the time of a "general revision" of the laws of the Order.

12th. It also alleged that under said Article XXV. at the time of a general revision it had a right to create a department to be known as the "National Judiciary" which would promote the intelligent administration of the affairs of the Order, and save the time of the National Council at its annual sessions by being freed from the necessity of hearing appeals.

14th. It admits that by the constitution adopted at Minneapolis the basis of representation was changed, but it denied that the change was unfair or in violation of any provision of the Constitution. It alleged that it was properly adopted under the provisions of said Article XXV. It also alleged that no basis could be "equal," but that it always desired an equitable basis. That at a subsequent session a change had been made in the basis, and that the change was beneficial to the complainant.

15th. It alleged that the general revision had before the Minneapolis Convention, held in 1899, was in 1894; and hence that five years had *had* elapsed, required before another general revision could be had. It insisted that the complainant was mistaken in holding that five years had to elapse after any *amendment* was

made to the Constitution before a general revision could be had, but that the five years began to run from the last general revision.

16th. It alleges that the old State Council was represented at the Minneapolis session, and that its representation took part in the business there transacted.

17th. It denies that the complainants had exhausted all lawful means within the Order, and alleged that it had pursued means contrary to the theory, traditions and laws of the Order.

(*a.*) By adopting a resolution at its Cape Charles meeting
17 to withhold the payment of the per capita tax to the National Council until certain alleged grievances were remedied; which was an attempt to coerce the National Council by cutting off its revenue.

(*b.*) By appointing a committee to present its alleged grievances to the National, without putting thereon any member who opposed the course of withholding the tax; which committee went to Philadelphia, while the National Council was in session and joined Committees from other insubordinate jurisdictions in presenting a peremptory demand upon the National Council to rescind the Laws and Constitution adopted at Minneapolis.

(*c.*) By advising through its Executive Board the representatives from Virginia not to attend the session of the National Council at Philadelphia.

(*d.*) By obtaining the Charter from the Legislature of Virginia, declaring it to be the "supreme head" of the Order in Virginia, with "exclusive" power to create subordinate lodges.

(*e.*) By voting down at its Roanoke session a resolution, reading, "that notwithstanding the State Council of Virginia has had its charter incorporated by the General Assembly of the State, that it is yet a member of the National Council Jr. O. U. A. M., and its deliberations in conventions will be conducted pursuant to the laws of the National Council." P. 128.

18th. It alleged that the dissatisfied members, comprising the complainant, had not taken proper steps for relief; that if the course of the National Council had been illegal it could have gotten proper relief in the courts.

19th. That the complainant had by its course deprived itself of all right to complain of the National Council, as it now claims to be independent of that body.

20th. It admits that the complainant had obtained the legislative Charter, but denied that it conferred the powers claimed by the complainant.

21st. It denied that the complainant had any right to the name under which it was chartered, and claimed that that name is one of the rights belonging to the National Council, or Order; that it had so belonged for a number of years, and could only be used by an organization created by the National Council.

22nd. It alleged that the National Council is the Supreme Head of the Order in the United States. It then stated how subor-
18 dinate Councils had first been organized by the National Council in Virginia, and afterwards the old State Council. It filed

a copy of the Charter to a State Council; in which the subordination of a State Council to the National Council clearly appeats.

23rd. It insisted that such a charter, when accepted, was a contract between the National Council and the State Council.

24th. It states that notwithstanding that contract the complainant obtained and accepted the legislative Charter, and now claims to be free of the contract with the National Council, but yet, with the right to retain the name, private work, emblems, regalia and all other property acquired under its contractural Charter, and that the National Council can create no other State Council in this State.

25th. It then alleges that the Charter is an impairment of the said contract between the National Council and the State Council, and is in violation of article 1, sec. X, para. 1, of the United — Constitution, and is therefore null and void.

26th. It also alleges that the said act of Assembly granting the Charter to the Complainant violates amendment XIV, sec. 1 of the same Constitution, which reads "nor shall any State deprive any person of life, liberty or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

27th. It then states how the old State Council of Virginia was proceeded against before the National Judiciary for insubordination; and how a decree was rendered declaring its Charter forfeited. That at the same time the National Council recognized as existing and operating the many subordinate Councils which had remained faithful, and opposed all acts of insubordination and refused to join the complainant in accepted the legislative Charter.

28th. It then states how the National Council granted to said faithful subordinate Councils a Charter for a State Council, and created a State Council on March 2, 1901, at Alexandria. And also states that the individual defendants were officers and members in such State Council.

29th. That a large minority of the State Council voted against the acceptance of the legislative Charter, and have continued to refuse to take part with the complainant.

19 30th. That the complainant is not entitled to use the name by which it was chartered, but that the same belongs to the State Council created at Alexandria; as does all the rights, privileges, books, papers, money and other property, which was held in trust by the old State Council.

31st. That the Legislature had no power to grant a Charter which would interfere with the rights of, or to give a name which belonged to others, such as the subordinate Councils, which remained faithful and were created into a State Council to succeed the old State Council.

32nd. It denied that the Alexandria State Council was collecting money to which the complainant is entitled, or that the Alexandria's State Council is using its name for any such purpose.

33rd. On the other hand it alleges that the complainant by using the name it does is collecting money to which the Alexandria State Council is entitled.

34th. It denies that the National Council has in the premises been guilty of any wrong doing, or improper or illegal combination and it denies each and every allegation in said bill of complaint charging or intimating the same, and call for strict proof of the same.

35th. It then charges that the said wrongful acts of the complainant are injurious to the National Council, and insists that it is entitled to relief in a court of equity.

36th. That the defendant is entitled to have the complainant enjoined from the following acts:

(*a.*) From using the name under which it was chartered by the General Assembly of Virginia.

(*b.*) From using the ritual of the National Council.

(*c.*) From withholding from the State Council created at Alexandria as aforesaid all the moneys, books and property which belonged to the old State Council.

(*d.*) From claiming and holding out to the world that it is the true State Council.

(*e.*) From soliciting any person to become a member of any of the pretended Councils of their pretended organization.

(*f.*) From collecting any money or dues under any claim or pretense that they are the true State Council.

20 37th. It then prays that the defendant may be enjoined from doing any of said acts.

38th. That its answer may be treated as a cross bill, and relief be granted.

The individual defendants filed their answers, which were adoptions of the answer filed by the National Council.

There were no dispositions. By agreement the exhibits filed with the Bill and those filed with the answer of the National Council, and a Statement of Facts, were made the evidence in the case.

After argument the Chancery Court on July 21, 1904, entered a final decree in favor of the complainant; which decree is the one here complained of.

Decree.

The decree in substance decreed:

1st. That the demurrer of the defendants be overruled.

2nd. That the prayers of the answers, to be treated as cross bills, be denied.

3rd. That the Act of the Assembly, incorporating the complainant, is constitutional and valid.

5th. That the complainant has the power to make such constitutions, laws, by-laws, rules and regulations as shall be necessary for its government.

6th. That it shall have in Virginia full and *exclusive* authority to grant Charters to subordinate Councils in the State of Virginia, to revoke the same for cause, and to make constitutions, laws, etc., for their government, to create such offices as it may deem proper, and fix the times, places and manner of elections.

7th. It enjoined the National Council, the individual defendants, as agents and representatives of said National Council, and their successors as officers in the State Council, chartered at Alexandria on March 2, 1901, and all others who are made parties to this suit under the general description of parties unknown.

(*a.*) From using the name of the State Council of Virginia,
21 Junior Order United American Mechanics, or any other name of like import.

(*b.*) From using the seal of the complainant.

(*c.*) From carrying out in the State of Virginia under the name of the complainant or name of like import, any of the objects for which the said National Council or the said State Council, chartered at Alexandria, were organized.

(*d.*) From using the name of complainant, or name of like import, in pursuit of the objects for which the complainant was chartered.

(*e.*) From granting Charters to subordinate Councils within Virginia.

(*f.*) From representing themselves to subordinate Councils in Virginia as the head of said Order in Virginia.

(*g.*) From interfering in Virginia in any way with the pursuit by the said plaintiff of its objects and purposes in Virginia.

(*h.*) From designating their officers in Virginia by the appellations set forth in the bill as used by the officers of the complainant and from continuing to use such appellations.

Argument.

It is hard to see how a decree could be made more comprehensive. It is manifest that this decree, if allowed to stand, tends to the destruction of the Order, as a National Order, and as it existed prior to the insubordination and rebellion of the complainant. It will leave those citizens of Virginia, who comprise the subordinate Councils, which remained faithful to their pledges to and contract with the National Council, without the existence and benefit of that necessary association, the State Council, the intermediary between their subordinate Councils and the National Council. They will be left by the rebellion of others, through no fault of their own, but because they have remained faithful to their obligations, without a State Council; without which they cannot prosper, even if they can exist, and which is so necessary for their proper representation and participation in the National Council.

It is almost impossible to believe that a violation of obligations will be allowed to work such injustice to others, or that a faithful observance of those obligations will be allowed to bring forth such injury.

It will be seen from the decree aforesaid that the lower court made no intimation that the conduct of those comprising the complainant was not insubordinate, violative of obligations, unjustifiable and rebellious. We insist that had the case been decided
22 upon such questions, the decree would have to have been in favor of your petitioners.

The lower court based its decree solely upon the ground that the Act of Assembly chartering the complainant is constitutional and valid, and then decreed such relief, as it deemed was required by reason of that act.

Before discussing the validity of said Act, we ask the court's attention to the alleged grievances, which the complainant offers in his bill as justification for the conduct of those comprising it:

It alleges five grounds:

1st. The creation of an Insurance Branch.

2nd. Change of Law as to Regalia.

3rd. Change of Basis of Representation in the National Council.

4th. The creation of a National Judiciary.

5th. That the Constitution was not properly adopted at Minneapolis.

1st. The Insurance Branch.

Let it be remembered that the report, which was adopted recommending it was a separate report from that recommending the form of a Constitution. It was adopted separately. Let it also be remembered that this was no new idea. For years it has been before the National Council, although it had been theretofore defeated. It was not sprung unexpectedly at Minneapolis, for the report shows the subject had been referred by the Louisville session in the preceding year to a Committee to report thereon at Minneapolis.

Let it be remembered that it is a mere auxiliary of the National Order. That it is not obligatory on any member. That whoever joins it does so voluntarily. Let it be further remembered that the complainant now admits that in its bill it charged what was incorrect, when it alleged that "the sum of $5,000.00 of the funds of the Order was illegally appropriated to said Insurance Branch. For section 20 of the Agreed Facts states:

"20. The $5,000.00 was not a gift or subscription to the Beneficiary Degree, but a *bona fide* loan to said Beneficiary Degree, but the whole has not yet been repaid. Said Beneficiary Degree or Insurance Branch was not to be assisted by levying a per capita tax, and no one is required to take said Degree; membership being purely voluntary on the part of the Order."

23 Those comprising the complainant contend that the National Council had no power to adopt such a branch without having its Charter amended as to its objects.

In this your petitioners insist that the complainant is in error. It should be noted that the Charter of the National Council does not limit it to the specified objects. That instrument declares that the National Council was incorporated "for beneficial and protective purposes, and among *other* things, the advancement of the following objects, viz:" then follows the specified objects. Your petitioners insist that under such language the National Council had the right to establish what was inaptly termed an Insurance Branch, but was merely a beneficial feature among the members of the Order. This position is fully sustained by the decision in Commonwealth vs. Equitable Ben. Asso., 137 Pa., 414.

But if the creation of the Insurance Branch be illegal, those comprising the complainant could have had ample relief in a court of equity. Surely they were not justified in breaking away from the Order, and in attempting to usurp the powers and privileges of the Order to its exclusion.

2ND. REGALIA.

The next alleged grievance is as to the change of laws as to Regalia. This crime seems to have consisted in omitting to require that certain gentlemen should wear certain ornamental aprons, or striped collars, or some other apparel, "expressed in fancy; rich, not gaudy." It may be that such deprivation grievously wounded some of the modest gentlemen, high in power among those who comprise the complainant. It may be that such a ruthless disregard of the personal pulchritude of those gentlemen is the unpardonable sin in the realm of the æsthetics. But we submit that so tiny a spark will not be considered in a court of equity, a sufficient justification for so destructive a result. Even if a court of equity should not hold the Thomsonian idea, that lov-liness "when unadorned, adorned the most," yet it will hold that the loss of a few aprons and collars cannot justify a breach of obligations, solemnly assumed, and effecting the interests of many fellow men. The complainant must seek for some other excuse for its conduct.

3RD. CHANGE OF BASIS OF REPRESENTATION:

The change which was made, can be readily seen by a comparison with article 7 of the Minneapolis Constitution. It did have
24 the effect of cutting down a number of representatives from the different State Councils. It allows only three representatives from each State Council instead of five, as theretofore had. That was a uniform cut affecting each State Council. And instead of allowing an additional representative to each State for every three thousand members over five thousand, it allowed an additional member for each ten thousand. That did reduce the representations of some State Councils; but it was a change for which good reasons could be given. It reduced the number of members which was getting large. It tended to allow each State Council to have a more equal basis of representation and power in the National Council.

It may be a debatable question whether the change was wise. But it was undoubtedly within the reserved power of the National Council, and there is not a shadow of proof that it was done with any motive except a proper one. The only evidence on the subject is found in section 23 of the Agreed Facts, as follows:

"23. The basis of representation cannot be made equal, and the representatives of complainant have never submitted an equal plan to the National Council. At the Philadelphia session of the National Council held in 1900 the basis of representation was changed, and such change was made more favorable to the complainant."

Surely the exercise of an undoubted power, done with a proper motive, cannot justify an effort to destroy the National Order in this State, to the injury of thousands of the citizens of this State,

who have remained faithful to their contract and their obligations to each other.

4TH. CREATION OF THE NATIONAL JUDICIARY.

In section 22 of the Agreed Facts it is stated, as follows:

"22. The Judicial department was established because it was deemed by the National Council a more intelligent method of administering the affairs of the Order, and that it would save the time of the National Council at its annual sessions, but the complainant does not admit that such results would be accomplished by such change."

It will be seen that in that statement the complainant made no denial that this new department was created with a fair and
25 wise purpose. It stands uncontradicted that the purpose was to benefit the Order. It is not even asserted by the complainant that it will not serve that purpose. All that is asserted by the complainant is that he will not "admit" it. Your petitioners insist that such a faint objection is an admission to the contrary. An examination of the article prescribing the powers and duties will make manifest the wisdom of its creation. Surely nothing could more clearly demonstrate the necessity for such a department than the insubordination of those comprising the complainant, and its sympathizers in other States.

It is worthy of note that no claim is made that it has ever been unfairly exercised. Nor can any successful contention be made that it was not within the power of the National Council.

Surely a measure, the wisdom of which the complainant refuses to deny, and the legality of which is beyond dispute, can not be a justification for insubordination, for the violation of a contract, and for reckless disregard for the rights of others.

5TH. ADOPTION OF MINNEAPOLIS CONSTITUTION:

The complainant in his bill makes as its chief ground of complaint, of the alleged radical and revolutionary acts of the National Council, the manner of the adoption of the Constitution at Minneapolis. It alleges that it could not be legally adopted at that session upon the report of the Law Committee. It bases that contention upon its construction of section 2 of art. XXV. of the old Constitution.

Your petitioners repeat here what they alleged in their answers that "the general power to alter and amend the Constitution every five years is not affected or restricted by said section 2 art. XXV. That said article XXV. does not require that the said amendments shall be submitted to the members of the Order, but "shall be referred to the Committee on Law before final action shall be taken thereon." And your respondent asserts that at said Minneapolis session that requirement of art. XXV. was fully complied with."

In section 21 of the Agreed Facts this admission appears:

"21. At the time of the revision in Minneapolis five years had elapsed since the last general revision, which was in 1894." In section 19 of said "Agreed Facts" another admission appears in these words:

"19. That requirement of art. XXV. that the amendment
26 shall be referred to the Committee on Law before final action shall be taken thereon, was fully complied with as shown by the proceedings of the Louisville session of 1898, of the National Council. The report of the Law Committee to whom had been referred the amendments offered and the General Laws and Constitution of the National Council and subordinate Councils for general revision will be found in Exhibit "E" filed with the answer beginning on p. 114."

There can be no force in the objection, which was pressed in the lower court, that the Constitution was not adopted by a two-thirds vote. In the bill it appears that the ground of objection was that the amendments were not submitted to a vote of the members.

By language of article XXV., sec. 1, it is evident that for the general revisions, authorized to be had once in five years, a two-thirds vote is not required.

Again, so far as the proof in the cause goes, it has been proven that it was adopted. It was so announced by the presiding officer. The law presumes that the officer did his duty, and required the proper vote. It will not do to contend that, because he refused to entertain a call for the ayes and noes, it is to be presumed that he counted incorrectly or did not require the proper vote. No such presumption arises in law—neither the record of the proceedings nor any other testimony shows that any such objection was made at the time.

Your petitioners in their answers stated what they again insist is the proper construction of the power reserved in article XXV. as to a general revision every five years. They beg leave to repeat here what they stated there. It was as follows:

"Your respondent again alleges that five years had elapsed since the last general revision, which was had in 1894; that the revision of 1899 was in accordance with law; that all alterations during the five years had been adopted by a two-thirds vote, and the National Council was acting within the scope of its powers and in complance with the Constitution. Your respondent submits that the complainants have wholly misunderstood and misconstrued article XXV., sec. 1, of the Constitution as to what is meant by the words 'oftener than once in five years.' The complainant insists that the proper construction of that section is that, whenever there shall be any amendment to the Constitution of the Order, the period of five years must again begin to run from the date of the adoption of such
amendment. Your respondent insists that this is clearly an
27 incorrect construction of that section. Your respondent insists that the five years began to run from the date of the adoption of the Constitution at Asheville in 1894, and that after the expiration of these five years, the Constitution can be revised without being subjected to the requirements applicable to an amendment, which might be made previous to the expiration of said five years. The true meaning of that paragraph is that the Order should have the right at the expiration of five years to have a general revision as contemplated in sec. 2, of said article XXV., but that if, prior to the

expiration of that period, the Order should see fit to make any amendments to the Constitution, such amendment or alteration should be adopted as provided by sec. 1, of said art. XXV.; or in other words, that there should be two methods of altering the Constitution of the Order; one applicable to a revision at the end of five years from the time of the adoption of the Constitution at Asheville in 1894, and the other for any amendment at any session held before the expiration of five years. Your respondent insists that if the construction claimed by the complainant be the true one, one of the objects intended to be obtained by said sec. 2 would be defeated, in that the adoption of any amendment would continue to prolong the said period of five years to such an extent that it would virtually defeat the provision contemplated by sec. 2, of said article XXV., as to a revision of the Constitution. Your respondent is advised, believes and so alleges, that as five years had elapsed between the adoption of the Constitution at Asheville in 1894, and the adoption of the Constitution at Minneapolis in 1899, it was authorized to proceed in the rivision of the Constitution in the method prescribed in sec. 2, of article XXV., and it alleges that in the adoption of said Constitution at Minneapolis, it lawfully pursued that course."

Your petitioners insist that the above is the only reasonable and true construction of said article. Your petitioners also call attention to the fact that the validity of the Minneapolis Constitution has already been passed upon favorably by the Supreme Court of Pennsylvania, under the laws of which State the National Council was created, and in which it exists. See Derry Council 40, J. O. U. A. M., etc., *vs.* the State Council of Pennsylvania, etc., *et als.*, 197 Pa., 413.

In the lower court the complainant contended that only one question was decided in that case, and that, that was, whether the Constitution was void because it was adopted outside of Pennsylvania. It is true that in that case the lower court granted the injunction on that ground. But it is manifest from the statements in the
28 argument of counsel and from the language of the court, that the question of the manner of "adoption" was also raised and decided. See language of court on p. 420. If further argument upon this question of the power of corporation to amend its Constitution be necessary, we ask consideration of the authorities upon the general principle as to the extent of such a power.

In Supreme Lodge K. of P. *vs.* Knight, 3 L. R. A., 409-412, the court said:

"A Constitution of a voluntary association or a corporation is created by itself, is nothing more than a by-law under an inappropriate name."

In Sup. Lodge K. of P. *vs.* Kutscher, 179 Ill., 340, the court says on pp. 345-6:

"It is apparent that the Supreme Lodge did not observe these provisions of its Constitution in adopting this by-law, if it did adopt it; but the appellant contends that the by-law was lawfully adopted although not in the manner provided in the Constitution. In this we concur. The Constitution was no part of the Charter of the corporation and was but a by-law under another name, etc., etc.

The same body that enacted the by-law, called the "Constitution," had the power to alter, amend or repeal them, and to do so in any lawful manner. * * * They may make rules and by-laws regulating their own proceedings and for their convenience, but a by-law otherwise lawfully adopted, of a general character like the one in question, is not rendered invalid, because in adopting it, the corporate authorities violated certain rules of proceedure which they had previously prescribed. This precise question, involving the same by-law in controversy here, was fully considered by the Supreme Court of Mississippi in Downes *vs.* Sup. Lodge K. of P. of the World, 75 Miss. 466, and the same conclusion reached."

The court also cites many other authorities.

See also Niblack Bene. Society p. 25, sec. 14.

It was contended by the complainant in the lower court that if such be the law, as to the Constitution, that then there was no binding contract between the members of the Order. Such reply is a *non sequitur*. While the National Council could only be bound by the terms of the Charter, yet others who agreed to be subject to the control of the National Council having so agreed among themselves are bound by such agreement.

29 Especially is it true that this power of alteration, amendments or "general revision" exists, where the power is expressly reserved. It is manifest that by the old Constitution the power to have a "general revision" every five years upon the reception of a report thereon by the law Committee, was expressly reserved. Here there was no unexpected action. It was ordered at the preceding annual session in Louisville. It was ample notice. Therein the facts differ from those commented upon in Smith *vs.* Smith, 3 Desau., 581, cited in the lower court by the complainant.

Your petitioners submit that in the light of the above it is clear that the contention of the complainant that the Minneapolis Constitution was attempting to be illegally adopted, and is therefore void and not binding upon the members of the Order, is incorrect and unfounded. Hence it furnishes no justification for the refusal of those comprising the complainant to obey its requirement, or for the attempt to injure the National Council and to destroy the rights of the many members who have remained faithful to the Order.

But the question still remains whether the complainant, although it may have acted without any cause, may have been insubordinate and rebellious, is not protected by the law in its conduct and its claim of power.

In order to determine the rights involved in this controversy, it is necessary to understand clearly the relations of the several parties to this litigation.

There is 1st. The National Council, the corporation chartered under that name by the State of Pennsylvania. The members of that corporation are comparatively few. They consist of the officers and past officers of the National Council, and the officers and past officers of the State Councils, and the representatives elected by each State Council from time to time to attend the annual sessions of the National Council. These and none others comprise the cor-

poration. But the body represents not only itself as a corporation, but it represents the State and subordinate Councils of this and the other States in the Union, as the creator, custodian and trustee of their powers, and it also represents to an equal extent each individual member of the subordinate Councils of this and of the other States.

To it the State and subordinate Councils owe their existence. From it each member of the Order receives the right to know and the knowledge of the secrets and rituals of the Order. This confidential trust could come from no other source. From it each State Council receives its authority to act and to govern in its respective sphere. Whenever such trust is made it is under the solemn pledge that the recipients will be guided by the Constitution and laws legally adopted, and that all exercise of those powers will be for the maintenance and good of the National Order.

There is, 2nd. The State Council of Virginia, a voluntary or unincorporated body, agent on the one hand of the National Council with delegated powers, and on the other hand, the representative of the subordinate councils and the individual members, but superior to them and controlling them, but subject to the National Council.

And, 3rd. By representation, through the National Council and State Councils, there are the subordinate Councils, *and the individual members of the order.* In fact, these *last* are the ones who have most at stake in this controversy. *They are the real parties in interest.*

We submit that, in deciding any question in this litigation, the fullest consideration should be given to the *rights of the individual members,* and that each question should be decided as involving their interests. To treat the legal questions here involved, whether it be those involving the powers of the State Legislature, or the scope and bearing of certain provisions of the United States Constitution, as affecting only the National Council or the conflicting State Councils, would be ignoring the real parties in interest, and sacrificing them, in the decision of the questions as to the conflict of powers claimed by mere representatives.

While in law a corporation is for the exercise of certain powers and the performance of certain duties regarded as a separate entity, yet it is equally true that the ultimate end had in view in the enunciation of principles governing corporations, is the interests and welfare of the constituent members of the corporation, and not those of the corporation, the mere legal entity. The corporation is regarded as existing merely for the benefit of the persons composing it.

So here it is the rights and interests of the individual members, which should be watched, guarded and protected. The Councils, from the highest to the lowest—from the National Council to the subordinate, should be regarded as existing as mere instrumentalities for the benefit of the individual members of the Order.

It therefore should be remembered that it is not only the powers and rights of the National Council which are involved, but the rights and interests of 3,500 citizens of this State, who remained faithful to the National Order.

31 An examination of the authorities will show that the courts in similar controversies recognized, as of first importance, the feature of mutuality between the individual members in such associations. The courts recognize that they are not formed for money making purposes, but for mutual assistance and benefit from voluntary contributions from each other.

Not only should these various relations by which the individuals are bound to each other be recognized, but there should also be always borne in mind how the Legislature of this State favored and encouraged those 3,500 of its citizens to become members of the National Order of the Junior Order United American Mechanics. The partiality and manifest assurance of protection, which the Legislature gave not only, to the National Order for the creation and installment of Councils in this State, but also to the said 3,500 citizens of Virginia who had entered, or who afterwards entered, the subordinate Councils, is found in Acts 1897–8, Chap. 688, p. 737. By the 9th section of that Act it expressly exempted this Order from the requirements of that act.

In considering this encouragement and assurance of protection, it should be noted that the State is not tendering it to some foreign company, like a manufacturing or mercantile company, to induce it to come in its midst by mere agents. It is inducing *its own citizens* to form themselves into voluntary associations, and by such means connect themselves with the parent and supreme association, without regard to whether it be a foreign or a domestic corporation or association. Such a fact gives the Order a relation or condition of domesticity, which segregates it from that of the ordinary foreign corporation doing business in the State's borders.

Thus the foreign corporation, which the State has induced to come into her territory and to form the State's citizens into these unincorporated associations, and to trust with the secrets and the benefits of the Order has become *quoad* these associations a domestic institution. Such a treatment is in itself an implied contract for existence and of protection.

Not only is that true, but the State has thus induced its own citizens to enter into these unincorporated associations to put their money in them, and thus to acquire a right to a mutual and moneyed assistance in the event of sickness or death. Hence when determining what power the State has in the premises over such unincorporated associations or over the foreign incorporated head, it must be remembered that it is not merely the rights of the parent body—the foreign corporation which is involved—but also the rights of the citizens of this State, who, under the said encouragement
32 from and assurance by the State, have formed themselves into the unincorporated associations, called the State and subordinate Councils, which were created in and exist in this State. It is true that by the creation of these voluntary *domestic* associations, each individual member becomes a member of the National *Order*, but he does not thereby become, and may never become a member of the National Council, the foreign corporation. Nothing of this Order has ever existed in this State, except these voluntary associations; most of

the members of which have never been a member of the National Council, and which only have a connection by representation with the National Council, as long as these assoc-ations conduct themselves according to their contracts with and obligations to the National Council. It is manifest then, that it is the interest of these 3,500 individual members and citizens of this State, that is of chief importance in this litigation.

No view could be more restricted, narrow and unjust, than to think that the litigation involves only the conflicting powers of the complainant and the National Council, the Pennsylvania organization. While these opposing claims are involved and should be decided; still there is a question at least as important, involved, and that is, what are the rights of these citizens of Virginia both under the laws of this State and the Constitution of the United States, who were encouraged by the State to become members of the unincorporated associations, and thus enter into a relation with the parent body. They have a legal right to insist that the State shall not destroy their connection with the supreme head, shall not subject them to another head, shall not destroy their existence, and deprive them of the benefits promised, and which will be received, unless destroyed by the State. These are the real parties in interest. Theirs are the rights which are chiefly involved. The State has no power to destroy those rights, nor to empower any set of individuals to break the contract, out of which those rights arose and upon which they depend.

Your petitioners do not mean to intimate that the National Council have not rights, growing out of its contract with the old State Council, with subordinate Councils and the individual members, nor that it has not rights of existence in this State. On the contrary, your petitioners not only insist that it has such right, but that those rights have been ignored and violated by the Act of Assembly, creating the complainant, in violation of the two provisions of the Constitution of the United States, cited in their answers, and referred to above.

Those questions will be hereafter discussed.

33 What your petitioners desire to call attention to and to emphasize is that, in any consideration of the questions here involved and in any decision upon the validity and constitutionality of the Charter creating the complainant, the manifest and great interests and rights of the 3,500 individual members, citizens of this State, shall not be ignored, but given due weight. What your petitioners are now insisting upon, is that the rights of those CITIZENS OF VIRGINIA shall not be regarded as the same as or as merged in those of the National Council. That the law shall be applied as not only involving the rights of the National Council, but also as affecting *their* rights.

A few facts are worth repeating in order that the rights of the National Council and those of the individual members may be clearly differentiated.

The National Council is a foreign corporation. Its rights grow out of the contract between it and the State Council, the subordinate

Councils and the individual members. Its remedies against the Charter creating the complainant depends upon its standing in this State, and upon the protection given it by the two provisions of the United States Constitution above quoted.

The individual defendants, and the other individual members of the Councils in this State, represented by them are citizens of this State. One of the subordinate Councils represented by these defendants is a corporation created by the Legislature of this State under the name of the Trustees of Lovettsville Council, No. 101, Jr. O. U. A. M. of Lovettsville, Virginia. Hence whatever argument may be advanced against the National Council on the ground that it is a foreign corporation, can be of no avail against these citizens of Virginia. Let it be remembered that the old State Council was a voluntary association in this State, and that the individual defendants and the individual members represented by them were a part, either in person or by representation, of that voluntary association.

As such was the relation existing between those then comprising the old State, the question, so far as to the individual defendants and the individual members of the Order in this State are concerned must be, what was the effect *as to them* of the acts of insubordination and separation.

Stated briefly is the act incorporating the complainant valid as TO THEM.

Of course, if it is invalid as to them, because violative of their rights, it is necessarily invalid as to the National Council, as it would otherwise destroy the right of the individual members repre-
34 sented by them, to be connected with the supreme head of the Order.

Such being the issue, what were the acts of those comprising the complainant and what was the effect of those acts? Being dissatisfied with the management of the National Council, they determined to cut loose from the National Order, to deny its jurisdiction and to form an Order out of themselves.

This is in substance what is admitted in section 14 of the Agreed Facts, which reads:

"Since said meeting a majority of the said State Council has refused to recognize as binding upon it, the Constitution and General Laws adopted at Minneapolis, or to obey the Rules and Requirements of the National Council in pursuance thereof."

Its independent, antagonistic and inimical position can be seen from the powers claimed by the complainant's bill to have been given by the Virginia Charter of Feb. 17, 1900. One of said powers is to give to the complainant the exclusive authority to grant Charters to subordinate lodges. No greater proof of its enmity to the National Order and to those in sympathy with it could be given, than the prayer of the bill in this cause that the defendants be enjoined from exercising such a power, so necessary for its successful existence in this State.

In Smith *et als. vs.* Same, 3 Desau., on p. 581, the court says:

"I think the acts of the members composing the Grand Lodge in

declaring the Grand Lodge dissolved (which they have produced in evidence) do amount to an express declaration that they would serve no longer, and is a voluntary and avowed abandonment of the Charter and of the Society. It was not a loose declaration, but a solemn act, published to the world, and since avowed to the court; and they are bound by it. Their very suit in a different character proves this."

The effect of those members of the old State Council acting thus and organizing the complainant is two-fold.

1st. The members of the complainant being no longer members of the National Order have shut themselves off from all right to complain of the alleged unlawful procedure of the National Council.

2nd. By the abandonment and desertion of such members all the rights and powers of the former State Council remained and belonged in and to those members, who remained loyal to the contracts and agreements embodied in their relations with the old State Council and the National Council.

The effect first stated being manifest, need not be discussed; Schnors App. 67 Pa., 138, approved in Gorman *vs.* O'Connor, 185 Pa. p. 247.

Upon the question, whether we have stated correctly the second effect, depends the decision of the merits and rights of this litigation.

The complainant insists that such was not the effect of the actions of those now comprising the complainants, who abandoned the terms or contract of association embodied in the social Charter granted by the National Council to the old State Council, and who through the complainant, declare that they now comprise an independent Order.

It may be well to have determined at once upon what principle the complainant can claim, that the said members of the order so acting did not surrender to, or leave remaining those, who stood steadfast and loyal, all the rights, powers and privileges of the old State Council.

Has the complainant two grounds, or only one, upon which it bases the claim, that those members have not surrendered any power, but have retained, and have retained *exclusively,* all the rights and powers of the old State Council? The bill states the contention of the complainant in the following language:

"Your orator charges that said organization, (meaning the defendant State Council) is wrongful and illegal, and in direct conflict with, and impairment of, the rights of your orator, under its Charter; and is also in conflict with, and impairment of, the right of the State Council of Virginia, Junior Order United American Mechanics of the State of Virginia, before its incorporation, and which are preserved in its corporate capacity."

It is a little difficult to determine whether the complainant means to claim that it has the protection of the *Common Law,* as well as that of the *statute* giving it its Charter. Treating it as a claim of double protection, let us see how far the law upholds it in either position.

There is not involved in this case any question whether the National Council was extreme and radical in its changes. The
36 courts do not interfere with the internal policy of fraternal associations. Black and White Society *vs.* Van Dyke, 2 Whart., 309; Grosvenor *vs.* Society of Believers, 118 Mass., 78–90; Baldwin *vs.* Hosmer, 25 L. R. A., 739; 1 Bacon Benl. Soc., sec. 89. Here the Court is not even asked to give any relief from such legislation. It does not even pretend to be affected by that legislation, for it asserts its independence of the National Council.

The complainant admits the overriding by the majority of that minority, which refused to follow the majority of that unincorporated association, called the State Council, into such abandonment and desertion. See section 29 of the Agreed Facts. It admits that that minority, which comprised about one-third of the members of the order in Virginia, never yielded their desire and determination to remain faithful and true to their contracts, obligations and relations with the National Council the other members of the National Order in this and other States. It admits that the minority, in the regular course of procedure of the National Order, became the recipient and remains the possessor of all the rights and powers of the old State Council of Virginia, so far as all the other members of the National Order residing in other States could and did bestow them through the National Council. It is in the face of such Agreed Facts that the complainant claims the exclusive right to and possession of the powers and properties of the old State Council, and the right to have a court of equity enjoin those who refuse to follow the complainant, and who have always remained members of the old State Council, from further enjoyment of any of those rights and powers, which, it is admitted, that they were entitled to before the desertion of the members, now merged into the complainant.

The right of this minority to revive the State Counsel through the National Counsel cannot be denied. See Smith *vs.* Smith, 3 Desau., *supra.,* and Polar Star Lodge *vs.* Same, 16, La. Ann., pp. 53–76.

The authorities show that -he complainant has had many exemplars in similar insubordination and desertion. They also show that the courts, by an unbroken line of decisions, refuse to sustain such insubordinate members. The cases are numerous, where the courts hold that all the rights and powers remained with the minority who remained faithful, and where the courts enjoin the deserting members from further exercising such rights and powers.

One or two of the earlier cases doubt or deny the power of a Court of Chancery to protect those who remain faithful to the Order. The complainant cited them in the lower Court. Among them is the
37 case of Austin *vs.* Searing, 16 N. Y., 112. We believe that this court, after an examination of the authorities, will hold that it is not the law of today.

We submit that this belief is sustained by the decision of the Supreme Court of New York in the case of State Council, Jr. O. U. A. M., of the State of New York *vs.* the New York State Council Jr. O. U. A. M., *et als.,* decided Dec. 10, 1902. We shall furnish

a copy of that decision. It will be noticed that in that case the complainant had been *incorporated* by the State of New York, as early as April, 1881, and that the defendant State Council held only under a contractural Charter issued by the National Council. There the majority of the old State Council claimed an exclusive right to its name, given by the State Charter, and which they had been using for years. But here the name of the State Council, at the time of the desertion of those comprising the complainant, belonged to an unincorporated association, and those, who abandoned the order, attempted to take the name by means of a Charter, which the large minority, here represented by the defendants, refused to accept. The New York Supreme Court held that the complainant was not entitled to the exclusive use of the name, since it had left the National Order and the National Judiciary had declared their contractural Charter forfeited.

The cases in 65 Md. 236, in 2 L. R. A. 841, and in 20 L. R. A. 272, cited by the complainants below, have no bearing upon the question here at issue, as to the right to form a corporation out of an association against the wishes of a minority. In those cases the questions are as to the power of the corporation, *after* the Charter had been rightfully obtained.

One of the earliest cases on the question here at issue is that of Smith *et als. vs.* Same. 3 Desau, 581. It denied the power to carry the body into another organization.

In McFaden *vs.* Murphy, 149 Mass., 341, it appears:

"The plaintiffs contend that they and those they represent constitute an association which was formed in the year 1872, under the name of Div. 1, Ancient Order of Hibernians, Bristol County, Mass. One answer of the defendants is that the association became *incorporated* under the St. of 1874, c. 104, and was thus dissolved as a voluntary association."

"In the year 1885 a breach arose among the members of the association, and two distinct organizations have since then been maintained which are represented respectively by the plaintiffs and defendants, and each of which claims to be in the original association."

38 "A large *majority* of the members of the division favored the new society and adopted its Constitution and carried on an organization as a division under it, which is the one that the defendants represent. They attempted against the opposition of the minority, to carry the association, as an organized body from the old society and Constitution to the new. It is plain that they had no authority to do this."

"But we are of the opinion that the majority ceased to be members of the association, and the proceedings of the minority who remained members were, so far as they appear, regular. We think that was sufficient notice of intention to withdraw from the society, and constituted and acted as a division under its Constitution, they ceased to be members of the society and division under the old Constitution."

Decree for Plaintiff.

In Altman *vs.* Berz., 27 N. J., 331, it appears:

"These societies are chartered by the grand lodge of the United States, and they owe allegiance to the grand lodge of the respective states in which they are located. They are all subordinate to the grand lodge of the United States. The question presented is, which of these bodies, both bearing the same name and each being composed of part of the members, who at the time of the withdrawal, constituted Teutonia Lodge, No. 177 D. O. H., is to be regarded as the society.

"There can be no doubt that that one, which remained true to its allegiance to the grand lodge of the United States and the grand lodge of their State, and as a consequence holds the Charter, is, for the purposes of this controversy, to be adjudged to be *Teutonia Lodge, No.* 177, *D. O. H.*, and as such to be entitled to the property of the society."

"In Gorman, Appellant *vs.* O'Connor, 155 Pa., 239; it appeared that a dissension occurred in the association of the Ancient Order of Hibernians, a division by a majority vote voted to repudiate the constitution of the Order, and to affiliate with an association composed of persons who had separated from the old Order. In the case the master's report was adopted as the opinion of the Court.

On p. 246, it is said

"The master is unable to perceive any distinction in principle between this and the cases, whereof many precedents occur in the reports, of members of a congregation forming part of a gen-
39 eral conference or synod, professing a certain form of religious belief, attempting, against the will of the minority to secede from the synod and to carry the property to the congregation with them."

"It is *therefore of no sort of importance what may be the majority* in such matters, it *cannot weigh a feather* in well known law in affecting the rights of the minority. Before civil authority the question is, not which party has the majority, but which is right according to the law by which the party has hitherto consented to be governed. * * *

"Had the entire body seceded, the organization would have become extinct. What before existed as an organization would then have become a new organization pertaining to another body. The opposition of those who refused to follow the lead of the seceding body served to *keep the organization alive,* and the funds remained with them."

N. Ben. Soc. No. 8 of Athens *vs.* Martin, 67 S. W. 38 (Ky).

"Where a schism has occurred in a religious or benevolent association, which had been united with and assented to the control and supervision of a general organization and acquired property since its union and assent to the government of the general organization, by the investment of dues collected from its members while harmony obtained, the title to the property remains in the name of the

association, and that faction, which has remained loyal and adhered to the laws, usages and customs of the general organization, constitutes the true association, and is alone entitled to the use and enjoyment of the association's property. The rule applies whether the subordinate association be a corporation or simply a voluntary association, and regardless whether the majority or minority of the active membership constitute the faction adhering to and observing the laws, usages and customs of the general organization, provided the minority includes the minimum number necessary to support the legal organization."

A case expressly applicable by reason of its facts is the late case of Internat. Com. Y. W. Ch. Asso. *vs.* Y. W. Ch. Asso., 194 Ill., 194, or 56 L. R. A., 888. In that case it appears that the appellee was an incorporated institution. That fact, however, is not made the basis of the decree in that case. Nor can the complainant afford to contend that that fact can make any difference, for it earnestly argued before the court below that the act chartering the complainant could not be held violative of the provisions of the U. S. Constitution, for the reason that they are not corporations intended to be embraced in those provisions. Moreover, the opinion in the case cited shows that the Supreme Court of Ill. based its decision upon the grounds clearly applicable to this case.

After the appellee had existed for several years certain members thereof became dissatisfied, seceded and had themselves incorporated by the above stated name of the appellant under the laws of Illinois. It existed for several years, and created under it many local associations. The appellee being the original association, brought suit to have appellant enjoined from the use of its corporate name. The Supreme Court refused the injunction, but on appeal to the Appellate Court that decree was reversed and the injunction ordered. Thereupon the appellant appealed. The Supreme Court of Illinois affirmed the latter decree.

In its opinion are found many expressions peculiarly applicable in this case.

The court said:

"Much confusion has arisen on account of the similarity in name of the appellant and appellee. * * * The question here, however, to be decided is had such persons, upon their withdrawal and reorganization, a right to adopt as a name for its managing board "International Committee of Young Women's Christian Association," a name which contains substantially the entire corporate name of appellee, a previously incorporated association, preceded by the words "International Committee of," which clearly indicate to the ordinary mind that appellant is a committee of appellee and the conference with which appellee is affiliated and with which appellant has no connection, and to use that name in the conduct of its affairs. We think not. The object, work, sources of support and field of labor of each being the same substantially, and the name of the appellee having been adopted and in use by it many years prior to the incorporation of the appellant, the appellant had no right to adopt as its corporate name one so similar to that of appellee, or to incorporate

in its name words which would indicate to the public that it was the representative of appellee and the conference with which appellee is affiliated. In addition to the similarity of name and the representation contained in the appellant's name that appellant is the representative of appellee and the conference with which it is affiliated, from an examination of the entire record it clearly appears that such name was adopted by the appellant advisedly, and for the purpose of leading the general public, and the persons with whom it was likely to be associated and from whom it hoped and expected to obtain support by way of donations, to believe that it stood as the committee and representative of the association, known as "The Young
41 Woman's Christian Association," then organized in the field where it expected to operate. Appellant may have felt justified in so doing by reason of the failure of the 'International Conference' to adopt the 'evangelical test,' yet such conduct in law amounts to a fraud upon the public and appellee."

The record in this case proves the injury intended, and the fraud perpetrated, with more force than it was done in the case just cited.

First, as to the injury. The charter asked for and granted to the complainant was purposely framed with the idea of injury to the National Council, by depriving it of power, and with the idea of injury to the faithful subordinate Councils by preventing the creation of any more like them. Thus it was not satisfied to exist and grow itself, but it designedly sought to take away all power of the National Council, and all opportunity of the growth of the National Order in this State, by isolating, and thus destroying the faithful subordinate Councils. In the selection of its name it made no pretence of seeking a different name. It boldly assumed the exact name of the association then existing. The injury and the fraud are both made manifest by section 9 of the Agreed Facts:

"9. It is agreed that both the plaintiff and defendant State Councils have granted and intend to grant charters to subordinate Councils in the State of Virginia and the City of Richmond; that each, by their organization and existence, are obtaining members and membership fees and dues, which one would obtain and receive, but for the existence of the other, and that both the complainant State Council and the defendant State Council are respectively claiming to the outside world that it is the only true and lawful State Council of Virginia Jr. O. U. A. M."

Your petitioners also submit that the record shows that the complainant allowed itself to be fraudulently advertised to the world as being a part of the National Order, by the publication in the "Virginia Courier," published as the "Official Organ" of the complainant. See p. 114. By that newspaper it was publishing, not its own "declaration of principles," but the declaration of the National Council, as adopted at Minneapolis, and was pretending to exist for the maintenance and realization of the objects for which the National Order exists, when, it knew at the time that it had deliberately abandoned the two prime objects of such existence, viz., to shield Americans "from the depressing effects of unrestricted immigration," and "to encourage the reading of the Holy Bible" in the public schools.

42 It is true the complainant attempts in "Agreed Facts" No. 15, to exculpate itself by an explanation. But its excuse is but a confession, for it admits that "the complainant never objected to the publication therein of the objects of the National Order."

It cannot be that the complainant, in the face of such facts, of the authorities cited, and the reason and right of the question, can place much reliance upon the claim of protection by the *common law*. It must be that its hope of success lies in the Act of February 17, 1900, creating it a corporation.

In other words the complainant must take the position that while this court would sternly censure such conduct, would characterize it as fraudulent, and would order a writ of injunction to stop it, the Legislature has power to step in, notwithstanding the legal existence of those having rights under the association, here called the old State Council, and authorize such conduct and legalize such fraud.

Your petitioners insist that the Legislature has no such power. It cannot legalize acts which are destructive of other's rights. It cannot validate a fraud upon what the courts have declared are the existing rights of others. It will not do to say that the subordinate Councils had no legal rights with which the act interferes, because it is evident from the above authorities that the courts would give relief to those Councils, upon the ground that such conduct as that of the complainant interferes with and injures rights which those subordinate Councils had. Courts do not grant writs of injunction except to protect rights or to prevent fraud. Hence the complainant will have to get this court to say that the Legislature had power to authorize an ignoring of those rights in those subordinate Councils and to transfer them to the complainant.

Before discussing the effect of that act, we ask attention to its scope and purport. The title of the act is "An act to incorporate the State Council of Virginia, Junior Order of United American Mechanics of the State of Virginia."

That language seems to express a purpose to create into a corporation some association already existing, though not existing as a corporation and to transform it bodily *as an entirety* into a corporation.

That this was undoubtedly the intention of the Legislature and the object of the act will clearly and conclusively appear, as we notice the several sections of the act.

Assistance in the construction of the act will be had by noting the conditions which surrounded the parties at the time of its passage.

The State Council was not, when in session at Cape Charles, informed of any such intention. While it passed a resolution as to the payment of the capitation tax, yet that was done when in evident expectation of some settlement of the dispute. No intimation
43 was given of any proposed separation, nor that any such step was in the contemplation of the most bitter opponent of the Minneapolis Constitution.

The charter was asked for by a few men.

It is to be presumed that they made as wild statements to the Legislature as they subsequently made in the bill of complaint, with fuller light to the contrary. In the bill they virtually allege that the complainant comprises the entire old State Council, that those who

originally opposed the acceptance of the charter afterwards acquiesced in it. If they would make such allegations in their bill it is easy to imagine what they claimed before the Legislature. It is, therefore, easy to understand why the Legislature used language which shows that it had no idea of destroying the rights of a minority, but only intended to create a corporation out of *all* of the members of the old State Council.

The 1st section of the act reads as follows:

"1st. Be it enacted by the General Assembly of Virginia that Floyd A. Hudgins, R. S. Criddle, Davis Bottom, Thomas B. Ivey, G. W. Kinney, W. D. Hill, and *all other members* of the State Council of Virginia, Junior Order of the United American Mechanics, and such other persons, etc., are hereby created a body politic, etc., etc.

3RD SECTION. That the said corporation shall have full and exclusive authority and jurisdiction to grant charters to subordinate Councils, Junior Order United American Mechanics," &c.

5TH SECTION. That the *present officers* of the State Council of Virginia, Junior Order of United American Mechanics of the State of Virginia, shall *continue in their respective stations* until an election shall be had," etc.

Such language indisputably shows that the Legislature did not intend to create a few persons into a corporation under the said name, but that its purpose was to transform the old State Council *in its entirety* into a corporation.

This fact the complainant cannot successfully dispute, for in its bill it asserts, on p. 1, as follows:

"Your orator, before its incorporation, existed as an unincorporated organization, under the name by which it was afterwards incorporated."

On p. 2, it speaks of itself as having once been "an unin-
44 corporated body, subject to the control of the National Council."

Again, on p. 9, it says:

"The *State Council* of Virginia, &c., applied, through its executive officers, to the General Assembly of Virginia for a charter for *its* organization."

It next alleges in its bill that the State Council accepted the charter by a vote of 85 in the affirmative to 17 in the negative.

It then asserts that "It embraces *all* of the members of the State Council of Virginia, Jr. O. U. A. M."

It afterwards alleges *"your orator existed,* as an unincorporated organization, and was afterwards chartered."

Will a complainant be allowed in the face of such pleading drawn by itself, to contend that the Legislature, when it said that it incorporated certain individuals and *"all* other members of the State Council," did not mean "all," but only such as chose to accept it? Is not every sense of justice, and every presumption of law against such a construction? If it meant to grant the charter to some of the members of the State Council, could it not and would it not have — "and *such* other members as may choose to accept this charter."

Ought not every word in the charter receive its usual and ordi-

nary acceptance. Is not that a "horn-book" rule of the law? Will not courts apply that rule, instead of a rule of construction, by which it will declare that the Legislature deliberately intended to work a gross injustice upon a fraternal order, which it had encouraged to come and exist in this State; that the Legislature deliberately intended to legalize what, we have *the* seen, the courts have unhesitatingly declared to be illegal and fraudulent conduct on the part of a faction of a benevolent or fraternal association; that the Legislature deliberately intended to override and destroy those rights of 3500 of its own citizens, which have always been recognized by the courts are entitled to protection from the law of the land; and that the Legislature deliberately intended to violate its contract by its charter to the Lovettsville Council.

Surely clear and explicit language or overweening and unanswerable reasons can alone justify such a construction. What are the reasons which may be offered as a justification?

None can be thought of except those offered by the complainant in the court before:

1st. That where a charter is granted to certain persons as incorporators, a majority of them can accept the charter.

45 2ndly. That the charter was opposed before the Legislature, and therefore was not expected to be accepted by all.

As to the first, your petitioners admit it is a *general rule.* But they insist that where the circumstances are such, where the rights are such, where the purposes had are such, and where the language is such, as to call for an exception to the rule, that the courts will recognize the exception, and will do, what is always the desire of the courts, carry out the intention of the Legislature in each specific case. That is all that your petitioners ask for here in the construction of this charter. They insist that the circumstances, the rights, the purposes and the language all demand the fair and reasonable construction, viz: That the Legislature intended the charter should be accepted by "all" the members of the old State Council or by none.

In reply to the second reason your petitioners admit that there was some opposition before the Legislature. But they insist that that very opposition tends to show why the Legislature granted the charter to "all" the members..

It is not hard to imagine the conflicting statements which were made by the two sides before the Legislative committee. Judging by the reckless statements as to unanimity, made in the bill in this case, as above quoted, it is easy to fancy what statements were made before the committee by those members asking for the bill. Those members had "a friend at court." Mr. Ivey was a member of the Legislature. Mr. Ivey was the editor of the "Virginia Courier," in which appeared the publication as to the complainant—a publication so misleading to the public as to the real nature of the complain*ant* that the complainant has attempted by section "15" of the Agreed Facts to avoid the odium attached to it.

In section "16" the complainant naively admits that the said Ivey "took an active part in having the same passed." Judging by the

allegations in the bill and his misleading and disclaimed publication, it is possible that his imagination was "active." His hope of "acquiescence" by "all" were doubtless more justifiable than the declaration to that effect alleged in the bill.

With that contention it is but fair to the Legislature to presume that it determined to solve the conflict by granting a charter to "all" the members of the State Council. By that it would do no wrong. If it should be accepted by "all," such unanimity would prevent injustice to any member of the State Council or to the subordinate councils represented by them. If unanimous acceptance would not be obtained it would do no harm, for it would then be void.

46 Hence we insist that the fact that there was opposition only tends to show that the Legislature deliberately and purposely used the words "*all* to other members."

Your petitioners insist by the above extracts from the act, and by the above quotations from the bill of complaint, two facts are made certain:

1st. That the complainant intended that the Legislature should transfer the old State Council in its entirety, and believed that it had done so. Upon no other theory can the integrity of the complainant in making those allegations in its bill be maintained.

2nd. That the Legislature intended to transfer the old State Council in its entirety into the corporation created by the act.

That transfer having failed of accomplishment, the object of the act has never been effected, and its acceptance has never been perfected. Hence that the complainant, claiming to be the corporation contemplated, has no authority for its alleged existence.

This view alone allows the act to be susceptible of an intelligent construction. The act does not say a word about the National Council. It nowhere intimates any desire to drive the National Council out of Virginia. Surely so destructive a determination cannot be a matter of presumption, especially where such a corporation was encouraged by the State laws to establish subordinate Councils in the State. It nowhere prohibits the National Council from granting one of its social charters to a number of subordinate Councils and forming them into a State Council. It is not to be presumed that the State intended to deprive subordinate Councils, composed of its own citizens and created under its encouragement, of the instrumentality necessary to their successful existence. It nowhere shows any intent to destroy any subordinate Council. Such an intent is not to be presumed. It nowhere says that the subordinate Councils, then in existence, should cease to exist unless they should surrender their principles, submit and become parts of the corporation, contemplated by the act. And yet what were to become of them? Were they to remain isolated in a state of suspension like Mahomet's coffin? Was it intended that they should be destroyed? Was it intended that they should not only be without "a local habitation," but also without a name? For it may be argued that if the Legislature intended to give to the complainant the *exclusive* right to the name of State Council Jr. O. U. A. M., then the complainant has as much

right to complain of the subordinate Councils using the name
47 "Jr. O. U. A. M." as it has to object to the Alexandria State Council. Was the Legislature indifferent to and reckless as to the result of its legislation? Or did it not rather act upon the well known principle that the members of such an organization cannot be forced into another organization except by a unanimous vote?

It should be remembered that the Legislature, only two years before incorporating the complainant, granted a charter to the "trustees of Lovettsville Council, No. 101, Jr. O. U. A. M., of Lovettsville, Va." (See acts 1897–8, p. 141, chap. 137.) It authorized that corporation to acquire and hold real and personal property "for the use of said Council of Junior Order of United American Mechanics, and the said trustees shall hold office only so long as they remean members of said Council."

The third section of the act reads:

"Whenever the said Council shall surrender its charter to the *State Council of Virginia,* or for any other cause cease to exist, the said trustees, or a majority of them, shall have authority to sell and convey the land and other property held by them for the use of said Council, and distribute the money belonging to said Council ratably among the members in good standing at the time of such surrender of charter, subject to the action of the *State Council.*" See pp. 131–2.

Certain facts are made manifest by the act of incorporation.

1st. The State recognized the existence in the State of the Order of Jr. O. U. A. M.

2nd. It recognized its divisions of representative bodies—the subordinate Councils and the State Council. And it must be presumed to have known of the supreme body, the National Council, and that to it the others owed their existence.

3rd. It recognized the social charters of the organization.

4th. It recognized as appropriated and used by an Order then existing the name of Jr. O. U. A. M.

5th. It chartered a subordinate Council by that name.

6th. It recognized the subordination to the State Council of Virginia.

48 It should also be remembered that the Lovettsville Council was created for two chief objects specified in the charter of the National Council, neither of which was mentioned in the charter of the complainant. How is the act to affect the subordinate Councils, and especially the Lovettsville Council, as to those objects? The Legislature could not force the Lovettsville Council to abandon the main objects of its existence. What then would be its condition if it remained faithful to the National Order?

It cannot be held, under such circumstances, that the Legislature intended to refuse to allow the supreme head of the Order to exercise the jurisdiction it had always exercised, or that it intended to so interfere with the subordinate Councils as possibly to destroy their future success, if not their existence, unless by the unanimous consent of the Order in the State as represented by the State Council.

Otherwise it would have broken faith with the Lovettsville corporation created by it.

Unless the act is construed to have been enacted by the Legislature with the intent that it was to be accepted by "all" of the members of the State Council, representing the subordinate Councils and the members thereof, it leaves the conditions undefined and unsettled, unjust and destructive. But construed, as we claim was the intent of the Legislature, none of these conflicting and contradictory conditions, and unjust and destructive results, are produced.

We submit that the Legislature intended that the charter should only be effective when accepted by the Order in Virginia as an entirety, speaking through "all," and not by a majority of the members of the State Council.

Should your Honors come to the conclusion that we are not right in the above construction of the intent of the Legislature, then we submit there is another construction of the act equally destructive of the claims of the complainant set forth in the bill. It is that the objects for which the complainant was created being distinct and different from those for which the defendant organization was incorporated, and its State Council and subordinate Councils created, the act must be construed as not having been intended to interfere with these defendants and their associates, but merely, though unwisely, to have created another organization of the same name for other purposes. Hence that although the complainant may have a right to exist, yet such existence does not affect in any way or to any extent the existence of the defendant organization or their power to exercise any of their pre-existing rights.

The Charter of the plaintiff does not contain the two main objects contained in the charter of the National Council, and for
49 which the National Council was chartered.

There are only two objects in the charter of the National Council which can be regarded as the really special objects of a corporation, or as causes for its existence, outside its beneficial feature. Those objects are the restriction of immigration and the upholding of the public school system and the reading of the Bible in such schools. All the others are of a general, indefinite nature, and subordinate to the first named object, such as any person or association would entertain and encourage without any incorporation. These others do not contain any distinctive idea for the basis of a corporation. Yet the complainant has been incorporated for only indefinite general objects, and either asked for or accepted a charter, which did not contain either of the two prominent special objects of the Pennsylvania corporation, and for which the old State Council existed and the defendant State Council now exists. Surely it cannot be said, looking upon the charters themselves, that the complainant was intended to supersede, or did supersede, the old State Council, unless *"all"* the members of the old State Council agreed to abandon the main objects for which it originally existed as an association. It cannot be presumed that the Legislature intended to force the members of the Order in this State to abandon the special objects of their existence, and to be created to represent mere "glittering generalities."

On the other hand, one or the other of two things is to be presumed. Either that the complainant did not desire to be incorporated for the only principal special objects set forth in the charter of the National Council, and for which only the order existed, or that the complainant desired to be chartered for those objects and the Legislature refused. No matter which alternative the complainant may contend is true, still it is evident that the two corporations are different, and were created for different objects, and that therefore the defendant State Council, like its parent corporation, exists for purposes different from those for which the complainant corporation exists. This, if we remember aright, was conceded by the complainant in the oral argument in the court below. Hence in creating subordinate Councils the defendant State Council does not illegally interfere with the objects of the existence of the complainant corporation.

The complainant attempted in the court below to avoid its effects by suggesting (but without any fact in the record to sustain it) that the Legislature did not desire, and possibly declined, to incorporate the complainant corporation for the two special objects aboved mentioned, because of their quasi-political charter. We submit that this suggestion but emphasizes the correctness of the contention made by us—viz., that the complainant corporation was never intended to be created for the two main and only special objects for which the National Council was created, and for which the defendant State Council and its subordinate Councils exist; and hence that it could not have been intended to supersede the old State Council and the Order as it then existed in this State. Hence that the Legislature did not intend to interfere with the defendant organization, but only to say to the complainant "I will let you be incorporated and exist also."

50

Even if the State had the right to give the complainant the same name, it had no power to give it an "exclusive" right to that name, nor to declare it the "supreme head," nor to give it "exclusive" power to create subordinate Councils. It had no power to interfere thus with the rights of pre-existing associations, voluntary and incorporated.

As the act made no mention of any intent to interfere with the National Council, as it does not order its retirement from the State; as it does not prohibit the creation of a State Council by the National Council; as it makes no requirement that the subordinate Councils then existing should submit to the complainant or disband; as it had theretofore chartered the Lovettsville Council, as a subordinate Council of the National Order; and as the objects for which the complainant was created are different from those for which the defendant organizations were created, it was evidently not the intention of the Legislature to interfere with the National Council, or to refuse to allow the National Council to exist in this State and to create a State Council with the necessary power to institute subordinate Councils.

Under this construction the only interference which the Legislature made with the National Order and the State Council of Vir-

ginia and the subordinate Councils adhering to the National Order was to give to the new corporation that *name* which the faithful subordinate Councils were entitled to have for the use of that association which would be created out of them, as the State Council.

On page 20 of its brief, in the lower court, the complainant claims that the Legislature had a right to give the name, at the time it did, because there was no other State Council then in existence.

The answer is two-fold:

1st. It was illegal because there is so close a resemblance between its name and that of the National Council and to the main feature of the name of each subordinate Council as to be injurious to that corporation and to the subordinate Councils and to be deceptive upon the public.

51 2nd. That the contention has been too frequently rejected by the courts to retain at this late day much strength. From the early case of Smith *vs.* Smith, 3 Desau, *supra*, the courts have held that the remaining subordinate associations are entitled to be regarded as keeping alive the old State association. Here there remained twenty-four faithful Councils, only five being necessary to form a State Council.

Hence under this view of the act of incorporation the questions are, whether a majority of a voluntary association, can even under cover of a legislative Charter, assume a name used by these existing organizations, voluntary or incorporated, or can deprive the remaining minority of such associations of the right to the use of the *name* of such association. We submit that the authorities are against any such claim.

In considering the law upon this claim let it be remembered:

1st. That the first question which the complainant must meet is not what are its powers *after* it obtained its charter, but it is whether it had any right in law to obtain such a charter against the wish of the minority of the old association.

2nd. That it is not claiming this right against the National Council, a foreign corporation only, *but also against the State Council, and association existing in this State and against many subordinate Councils existing in this State and comprised of thousands of the citizens of this State.* And that if such relief be granted, it will result virtually in the destruction of the Lovettsville Council, previously incorporated by the State of Virginia.

With this insight into the question at issue, we submit to the court the following authorities, in addition to those already cited:

In Niblack Bene. Societies, sec. 90, it is said:

"The dissatisfied members of an unincorporated voluntary society cannot, by *incorporating* themselves, deprive the unincorporated society of the right to use its own name; and a temporary injunction for the purpose will be granted. An action will lie on behalf of an unincorporated society to enjoin a part of its members from procuring the incorporation of a society under the name used by it."

If an injunction will lie to prevent the dissenting members
52 from procuring a charter, what virtue can there be when such a charter is so wrongfully obtained?

In Grand Lodge *vs.* Graham, 31 L. R. A., on p. 138, it is said:

"The question arises, what right, if any, had the plaintiff, a seceding body, *by reason of its incorporation*, to the exclusive use of the name? It seems to me it has no such right. The defendants have the prior right to the use of the name, as they have been using it by permission of the Supreme Lodge continuously from the time of the organization of the original Grand Lodge up to the present. The fact that they are not incorporated is wholly immaterial, for they have been doing business *under the name with the implied assent of the State authorities during all these years.* They have not adopted a name selected by the plaintiff for the purpose of defrauding, or to create the impression that they are identical with the plaintiff, nor have they done anything calculated to mislead or deceive the public. The facts appear to be that the plaintiffs, in amending their articles of incorporation, and in procuring their certificate from the State Auditor, have taken a name which was heretofore in use by the defendants, and of which they cannot be deprived simply because the plaintiffs see fit to use it as its corporate name."

"The right to use the name 'Grand Lodge of the Ancient Order of United Workmen of Iowa' cannot be claimed by a seceding body merely because it has become incorporated, to the exclusion of the body from which it seceded, which previously had used the name, and continued to do so without incorporation."

The court said, on p. 158:

"And it seems to be well settled that the name of a corporation, while not a part of its franchise, is, *to a certain extent, property*, and that it will be protected in a proper case on principles somewhat analagous to those applied to trade-marks." The court cited Ottoman Cahory Co. *vs.* Dane, 95 Ill., 203.

In the Ottoman Cahory Co. case, *supra*, the Court said:

"The fact that a corporation was organized under the laws of this State, subsequent in date to the time the defendants com-
53 menced business, which assumed the same name under which defendants were carrying on their business, could confer no right upon complainant to invoke the aid of a court of equity to restrain the defendants from the use of the name. So far as the complainant was concerned, the defendants had the prior right to the use of the name, as they had conducted their business under the name assumed continuously from the date of the organization of the Michigan corporation."

It will be noticed that the Supreme Court of Illinois did not regard the chartering of the Illinois corporation, *ipso facto*, an exclusion from the State of the Michigan corporation.

In Henry, etc. *vs.* Deitrich, etc., 84 Pa., 286, it was held:

"A minority of the persons in an unincorporated association in whom a trust of a church property is vested cannot by procuring a charter of incorporation acquire the right to the management of the property in opposition to the will of the majority of those interested."

The court said, on p. 294:

"It was settled in the case of Commonwealth *vs.* Jarnelt, 7 S. & R.,

406, that a majority of the persons in whom a trust of a schoolhouse was vested could not by associating and procuring a charter of incorporation under the act of April, 1791, acquire the right to the management of them in opposition to the will of the majority of those interested. It is not proposed to overturn or otherwise interfere with any legitimate powers of the defendants, as no inquiry into the validity of the charter would be possible in this collateral proceeding. * * * The charter may be useful somewhere, but it has no place here. Whatever its value and in whatever direction the franchise it has conferred may be exercised, it is mere waste paper, and its place would be more appropriate in a waste-basket than among the files of a court of justice, so far as its provisions relate to the organization, the land, or the church buildings of these congregations."

See also International Committee Y. W. C. A. *vs.* Y. W. C. A., *supra.*

Thus we see the courts declare that the *obtaining of a charter* by a majority does not interfere with the right of minority of an
54 unincorporated body to continue to use its name. That such a charter does not confer any exclusive right upon the corporation or restrict the right of such outstanding minority. Yet the lower court based its adverse decree solely upon the fact that the complainant had obtained a charter.

Here the act does not pretend to confer in express terms any exclusive right to the name upon the complain-t corporation. The court should not have declared such to have been the intention of the Legislature without clear and express language. See slaughter-house cases, 16 Wall., 36. And surely the courts will never presume such an intent on the part of the Legislature against those who have been encouraged by the State to become members of the old association, and to one of whom the Legislature had not only conferred a chartered right to the main features of the name, but had also by the same enactment declared its recognition of the State Council as created by the National Council.

Indeed, the courts go further and hold that the unincorporated body has the right to have its name protected from use by outsiders just as an individual has.

In Celluloid Co. *vs.* Cellonite Co., 32 Fed., it is said, on p. 97:

"The defendant's name was of its own choosing, and if an unlawful imitation of the complainants, is subject to the same rules of law as if it were the name of an unincorporated firm or company."

Transpose the parties, and the above language becomes strikingly appropriate.

In Goodyear Rubber Co. *vs.* Goodyear India Rubber Glove Company, 22 Blatchford, 421, the court said:

"If the proof warranted the inference that the complainant assumed a name by which the defendant was known, for the fraudulent purpose of deceiving the public and of supplanting the defendant in the good will of its business, the court would not only refuse to assist the complainant, but would intervene to protect the defendant."

But the complainant may again claim that the *National Council,*

being a foreign corporation, has no right to complain in a court of the State of Virginia that a corporation created by the Legislature of Virginia is using its name in Virginia.

There can be no force in that position. While it is true that a foreign corporation cannot do business in this State without the consent of this State, yet that does not prevent a foreign corpora-
55 tion from appealing to a court of this State for protection from an act which is a fraud as to the corporation and a deceit upon the public.

In the Grand Lodge *vs.* Graham, 31, L. R. A., *supra*, the following facts appear:

The complainant State Council had been chartered by the State of Iowa, without opposition, several years before the litigation arose. The National Council of the Order was a Pennsylvania corporation. The defendant State Council had no existence except as a voluntary association with a contractual charter from the supreme head of the Order.

The Supreme Court of Iowa refused to enjoin the defendant State Council from using the name, and held that the statute of Iowa did not prevent the existence of the defendant State Council or give the complain-t State Council any exclusive right to the name.

In Investor Rubber Company *vs.* Robinson, 72 Fed., 603:

The complainant was a Massachusetts corporation, suing in the Circuit Court of the U. S. for the Southern District of California; the defendant, a corporation chartered under the laws of California. The complaint was as to the use of a similar name. The defendant demurred. Demurrer overruled.

In Ottoman Cahvary Company *vs.* Dane, 95 U. S., 203–5, the court said:

"The fact that a corporation was organized under the laws of the State, subsequent in date to the time defendants commenced business, which assumed the same name under which defendants were carrying on their business, could confer no right upon complainant to invoke the aid of a court of equity to restrain the defendant from the use of the name."

In Goodyear Rubber Company *vs.* Goodyear India Rubber Glove Company *et als.*, 22 Blatchford, p. 421, it appears that the complainant was a New York corporation, while the defendant, who filed a cross bill, was a Connecticut corporation.

Judge Wallace, holding the U. S. District Court, for the Southern District of New York, said:

"If the proof warranted the inference that the complainant assumed a name by which the defendant was known, for the
56 fraudulent purpose of deceiving the public and of supplanting the defendant in the good will of the business, the court would not only refuse to assist the complainant, but would intervene to protect the defendant."

These authorities show that a foreign corporation is not without protection from a domestic corporation as to the use of its name.

We ask consideration of the case of Peck Bros. Co. *vs.* Peck Bros. & Company, 51 Cir. Ct. App., p. 257, 59, 60, 61. We call attention

to that case because this question is fully discussed therein. The court points the manifest difference between the sovereignty in excluding a corporation and a declaration which must result in injuring the property of another and in commission of a fraud.

Will it be claimed that the Legislature of Virginia can charter a corporation under the name of the Standard Oil Company, of the United States Steel Company, or the Virginia & Carolina Chemical Company? No! for it would interfere with vested rights, and it is *ultra vires* for a State Legislature to assist in the consummation of a fraud. Hence it had no power to confer upon the complainant the right to use the name given by the act.

It is no answer to this question to say that the corporations cited are business corporations, while the National Council is merely a fraternal corporation. That is a distinction without a difference. Will the courts be asked to ignore the great importance that the fraternal associations bear, not only to the social life, but also to the financial interests, of hundreds of thousands of men of this nation? Surely it is within the judicial knowledge of this court that there are a score or more of these fraternal associations, from the Ancient Order of Masons to the latest organization. Many of them number their members by the tens or hundreds of thousands. Each one of the members in most of the associations have been paying their weekly or monthly dues with the promise of weekly assistance in money if sick, and with the promise of payment of funeral expenses in case of death. In some of them there is an insurance feature of considerable importance. Do not these promises of money, which have been paid for, amount to sufficient "business" to justify protection from the courts? It cannot be that these associations, so important to tens of thousands of poor men, are to be held not of sufficient importance to receive protection from the courts.

Are all the fraternal and benevolent associations to be at the mercy of the Legislature—not for the purpose of abolishing them as dangerous, but to the extent of siding with some faction in any one of them, declaring that faction the only true representation of
57 the Order, and excluding the rest from further exercising the rights to which by mutual agreement they are entitled? Such is the far reaching extent of the claim of the complaint and of the decree here complained of.

Your petitioners insist that such can not be the law of the land. Should it be, the decision rings the death-knell of all fraternal organizations. It will encourage the formation of factions in and desertions from each Order. Each faction will try its political strength before the Legislatures of the States. Peace and Order will be abolished, and Success and Mutual Benefit will be destroyed. We submit that the Legislature has no power to destroy existing rights in such a manner.

But if the National Council be for that reason without the right to ask the aid of the court of equity in this State in its own behalf by a writ injunction to prevent the complainant from using a name injurious to said Council and deceptive to the public in its similarity, yet it had such right as representing many citizens of Virginia, as

the individual members of those unincorporated associations, the State Council and the subordinate Councils.

Whether this be true or not, the State Council, a Virginia voluntary association, has the right to pray for protection against the complainant, and for appropriate legal redress.

The constituent elements of the Order of Junior Order United American Mechanics are, as follows:

First. The National Council.

That body is the corporation chartered by the laws of the State of Pennsylvania.

The membership of that corporation does not embrace all the members of the Order. In fact it embraces but very few of them. Its membership is fixed from time to time by what is called the Constitution of the National Council. See p. 9 of the Appe-dix to Ex. "D" with bill, and p. 215 of Ex. "E" with answer.

Second. The other chief elements of the Order is the general mass of individuals called the Order. These individuals are connected with the corporate body, the National Council, by their voluntary association and agreements. Their first bond of connection with National Council is by a recognized number associating themselves together and asking for a charter from the National Council, that is, a written instrument authorizing them to use the name of the Order, in forming themselves into a *subordinate* Council, to use the ritual and signs of the Order, and to be entitled to all the privileges
58 of the Order, upon the terms and conditions set forth or referred to in said charter. Upon accepting such charter, each of the members of such body accept, and bind themselves to abide by, those terms, among which is the chief obligation to obey the Constitution and laws adopted by the National Council.

The second connection or relation, which such individual members may have with the National Council, is through what is known as the State Council of a State, a body created by a Charter or instrument also emanating from the National Council and granted upon the terms set forth therein, among which is the agreement to obey and submit to the National Council, and which a State Council has to agree to accept and abide by before being entitled thereto.

The State Councils are composed of representatives from the subordinate Councils of the State, and from its midst are elected the persons, who form the National Council, or corporation.

Thus it is by the charter of a subordinate Council that every individual member thereof has agreed with every other member thereof to make the National Council both the fountain-head and the custodian of their powers.

"Thus it will be perceived the grand lodge is not only the governing body of the Order and a court of appeals for each subordinate lodge and every individual member thereof, but they are also the trustees and dispensers of the endowment fund."

Young *vs.* Sons of Progress, etc., 173 Pa., on p. 304.

Oliver *vs.* Hopkins, 144 Mass., on p. 176.

"This was the tribunal of last resort as established by laws and

rules of the association, etc. It was a court established by the parties to settle difficulties growing out of the association," etc.

"The theory that *subordinate lodges* are *independent corporations* is wholly inconsistent with the system of government of such orders."

"The relator itself (subordinate lodge) is not a Knight of Pythias. *Corporations* do not become *members* of the Order, it is merely an instrumentality through which the work of the Order is carried on." Grand Lodge K. of P. *vs.* People, &c., 60 Ill., App., on p. 556.

Thus it is that every individual member of a State Council, being only a representative of a subordinate Council, agrees and
59 binds himself, by the contract known as the charter from the National Council, to each and every other member of the State Council and also to each and every member of the several *subordinate* Councils to use the name of the State Council, Jr. O. U. A. Mechanics and to adopt a State Council ritual; all for the benefit and increase of the National Order, and to obey and be subject to the National Council.

These unincorporated bodies are in the nature of social partnerships. The individual members have each a right to appeal to the law to prevent any other member or members of such an association from doing any act which will be a breach of the instrument conferring existence and powers upon the association, and which will be a direct injury to the existence of the subordinate association itself, or to the National Order of which it is part, and upon which it depends for its successful existence.

Therefore we claim that whether the National Council can or cannot ask for relief against the wrongful acts of the complainant State Council, or of the subordinate Councils connected therewith, yet the individual defendants for themselves and other individuals forming the subordinate Councils, have a right to object to the use by the complainant of the name under which it was chartered, and have a right to that name, which the Legislature cannot ignore, as they are associations and individuals residing in this State.

Their right to relief is based upon three grounds:

1st. The equitable principles by which trade-marks are protected and by which vested rights are maintained.

This applies to the acts of the insubordinate members themselves, or the acts of the complainant State Council.

2nd. That the act of incorporation was violative of that provision of the U. S. Constitution, prohibiting any State from passing any law impairing the obligation of a contract.

3rd. The act of incorporation is violative of the 14th amendment of the Constitution of the United States, which reads, "nor shall any State deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

We have already discussed the first ground, and shown how the courts recognize and uphold the rights of those who remain true to and a part of the original organization. It is true that at one
60 time a few of the courts hesitated to recognize the existence in law of the unincorporated fraternal and beneficial associa-

tions. But so great has been their growth, so important factors have they become in their eleemosynary features, and in their benefit privileges, that courts of chancery now recognize that the obligation of such associations, their right to their name, their rituals, and other distinctive marks, are rights and claims, which, while not strictly property, are entitled to legal protection. Niblack Ben. Societies, sec. 117. Grand Lodge *vs.* Graham, 31 L. R. A., *supra.*

Hence the complainant will be wrong, if it should again claim that unless the act be violative of the provisions of the U. S. Constitution his prayer *must* be granted. Without regard to the U. S. Constitution the courts hold, as we have seen, that a minority cannot be deprived of its rights by such an act.

The lower court held by its decree that the act does not impair the obligation of a contract. While the court assigned no reasons for so holding, it must have been upon one or the other of two grounds pressed before that court.

Those contentions were:

1st. Because there was no contract between the old State Council or the members thereof, and the National Council and the subordinate Councils and the individual members of the Order.

2nd. If there had been such a contract, and its obligation had been impaired by the act, yet it was not such a contract, as is covered by the provision of the United States Constitution, prohibiting a State from passing any law impairing the obligation of a contract.

We insist that these social charters, or instruments of association, are contracts, binding and obligatory upon each and every member of the State Council, as a member thereof, and upon each and every member of the Order.

As was said in *Chamberlain vs. Lincoln,* 129 Mass., 70:

"It is clear that the rights to the members of the subordinate lodges must be determined by the provisions of these instruments."

Kuhl vs. Mayer, 42 Mo. App., 474, it is said:

"In case of unincorporated voluntary associations like the present the rights fixed by their constitution and by-laws *rest in contract.*"

61 In Sup. Lodge K. of P. *vs.* La Maltu, 30 L. R. A., 838–9 (Tenn.), it is said:

"The laws of this Order, as of other benevolent associations, when applicable, and not in conflict with Federal and State laws, or contrary to public policy, are to be taken as parts of its contracts with its members, and as such are of great moment in the determination and enforcement of their respective rights and obligations under those *contracts.*"

In Baldwin *vs.* Hosmer (Mich.), 25 L. R. A., 743, it is said:

"The Constitution and laws of the Order were the *contract* between the parties."

In Bacon Ben. Society, sec. 37, the same principle is stated, as follows:

"It is always true, however, as was said in Protchell *vs.* Shafer, *et als.,* that the articles of association are doubtless to be considered in the light of an agreement, between the members, extending or

limiting any general obligations, which binds them to each other as members of the partnership."

To the above authorities might be added many others besides the cases already cited on other points.

Hence we see that between the State Council, on the one side, and the National Council and the individual members of the Order, as members of the subordinate Councils on the other side, there was and is a CONTRACT by which each one agreed to be bound.

It will not be denied that it is part of that contract that each one will help to foster and increase the Order—that he will do nothing to injure it—that he will not use the name of the Order improperly and to its injury, nor its seal or ritual except for the purposes of the Order.

It was only under and by reason of the terms of such a contract that the individual members became entrusted with and learnt the ritual and signs of the order. It was a part of that contract that they would severally be obedient to the Constitution and laws of the National Constitution.

But now it is claimed that the rebellious members can do any acts, violative of their contracts, under the sanction of the State, and by the virtue of its statute of incorporation.

Even if the Legislature was not by its own nature without
62 power to override the rights of a minority of an unincorporated association by attempting to force it into a corporation, or to be destroyed as an association, yet your petitioners insist that it could do no such injustice and wrong, because it is prohibited by the provision of the United States Constitution as to the impairment of the obligation of contracts.

The complainant attempted in the lower court to protect itself by insisting that the "contracts," which the Constitution protects, "relate to property rights." On the other hand, your petitioners insist that those words are used in the cases in contradistinction to "governmental" rights. Dartmouth College Case, 4 Wheat., on p. 629. Stone *vs.* Mississippi, 101 U. S., on p. 820.

It was not intended by the decisions, announcing that distinction, to declare that the litigation must be about the ownership of or right to some property, in which the complainant claims a financial interest or personal benefit. It was only intended to hold that the question at issue should involve the control of or threatened injury to some property in existence or to some which would come into existence under the contract in dispute, or to some right recognized by law as valuable, although not having an actual money value.

In construing judicial decisions upon a great question like the one under discussion, one should not take the narrowest meaning of the words used, but should take that meaning, which is nearest in scope to the great object had in view by the constitutional provision.

It cannot, therefore, be successfully contended that the contracts here existing are not protected by that provision of the U. S. Constitution which is under discussion, for the reason that the contract is not one as to a business corporation, or a trade, or to a profit making institution.

It is true that in the case of Derry Council, 197 Pa., *supra.*, the Supreme Court of Pennsylvania said that the National Council "is of social and not of business character." And undoubtedly such a description is true if we look, as that court was then looking, at the *main* objects of the corporation. But an examination of the decision in that case will show that, while the court was thus describing the National Council, it was also upholding its power and its declared purpose to enlarge its beneficiary feature. It had always had its funeral benefits, in which each member had a pecuniary interest.

It will not do, therefore, to contend that that court meant to deny that each member had any pecuniary interest in the association. Such a statement would not have been true. It is evident that the court was only describing the general character of the Order. We insist that, even under the strictest construction, the constitutional provision does cover a corporation like the National Council
63 and a voluntary association like the State Council, created by it.

But we insist that the Supreme Court of the United States never meant that its language should be given so narrow meaning.

The leading case upon this question is, of course, the Dartmouth College Case, 4 Wheat., 518. An examination into the facts of that case will throw a great deal of light upon the meaning of the words of the judges who delivered opinions in that case.

It involved the right of the State of New Hampshire to change the colonial charter of the college. The College was not a corporation for profit or money making. It was an educational institution. The complainant had no pecuniary interest whatever in the college, he only claimed to have the legal right to see its rights and powers protected. It was insisted in the argument that the complainant had no interest which would authorize him to bring and prosecute the suit.

On p. 630, Ch. Justice Marshall said:

"But if this be a private eleemosynary institution endowed with a capacity to take property for objects unconnected with the government, whose funds are bestowed by individuals on the faith of the charter; if the donors have stipulated for the future disposition and management of those funds in the manner prescribed by themselves, there may be more difficulty in the case, although neither the persons who have made these stipulations, nor for those whose benefit they were made, should be parties to the cause. Those who are no longer interested in the property may yet retain such an interest in the preservation of their own arrangements as to have a right to insist that those arrangements shall be held sacred. Or, if they have themselves disappeared, it becomes a subject of serious and anxious inquiry whether those whom they have legally empowered to represent them forever may not assert all the rights which they possessed, while in being," etc., etc.

Here the persons interested are alive, some are before the court personally, some by representation through the National Council and the defendant State Council. As we have said, the individual members are not only desirous of preserving an association for an educa-

tional purpose, and other objects, in their opinion at least, equally as laudable, but they have each a pecuniary interest in the preservation of the property and the maintenance of the association, for otherwise they will lose their sick and funeral benefits for which some may have paid their dues for years. A policy holder has no greater interest in a life insurance company than has each member of this Order in its maintenance, except that the amount to be
64 received may be larger. A violation of the U. S. Constitution does not depend upon the size of the interest involved.

To impair the contract with the Lovettsville Council it was not necessary to destroy that corporation. It is sufficient if the act impairs its rights along the lines of existence recognized by the charter. The charter recognizes its relation to the State Council and contemplated the continuance of such relation until its dissolution. That subordinate Council would not have been organized and incorporated, but for its relation with the State Council and the National Council. To destroy that relation is to impair the obligation of the State charter. That relation is destroyed, if the Legislature could destroy the old State Council and the relation through it with the National Council. It destroys what was the common law at the time this Council was incorporated, for the law of the land then was that a minority in such associations would be protected.

In the Dartmouth College Case, the Supreme Court held that the charter for the eleemosynary institutions was a contract. The Chief Justice said, on p. 644:

"It is a contract within the letter of the Constitution, and within its spirit also, unless the fact that the property invested by the donors in trustees for the promotion of religion or education for the benefit of persons who are perpetually changing, though the objects remain the same, shall create a particular exception, taking this case out of the prohibition contained in the Constitution.

"But although a particular and rare case may not, in itself be of sufficient magnitude to induce a rule, yet it must be governed by the rule, when established, unless some plain and strong reason for excluding it can be given. * * * *It is necessary to go farther*, and to say that, had this particular case been suggested, the language would have been so varied, as to *exclude* it, or it would have been made a *special exception*.

Here each individual member has contributed time and money to the furtherance of the educational and other social objects of the associations. Here each member looks forward to receive a pecuniary benefit. Here each has a double interest in the maintenance of the National Order and in the maintenance of a State Council as a part of the Order, as it was before the complainant was created.

On page 645 the Chief Justice asked a question, which should be regarded as a complete answer to the contention here raised, that the relation between the members is not such a contract, as is covered by the Constitution. He asked

"Are contracts of this description of a character to excite so
65 little interest, that we must exclude them from the provisions of the Constitution, as being unworthy of the attention of those who framed the instrument."

If such a question had been asked by that great Chief Justice about those beneficial organizations, is there any doubt as to what would have been his answer. He would have declared them within the broad pale of that grand Constitutional protection.

The same construction of that provision of the United States Constitution was repeated in the Pennsylvania College Cases, 13 Wal., 190, and in Bryan *vs.* Board of Education, 151 U. S., 650. See also Cary Library *vs.* Bliss, 151 Mass., 364.

We insist that the statute of incorporation of the complainants was an impairment of the obligation of the contracts existing among the members of the Order, and for that reason void.

It is void also for another reason—it deprives the defendants of their property without due process of law, and denied to them within the State of Virginia the equal protection of the laws.

In Marchant *vs.* Penn. R. Co., 153 U. S., 380, the court said, on p. 389:

"The question thus raised is within the case of Missouri *vs.* Lewis, 101 U. S., 22, where it was said that "the clause in question means that no person or class of persons shall be denied the same protection of the laws which is enjoyed by other persons or classes in the same place and under like circumstances.' "

In Duncan *vs.* Missouri, 152 U. S., 377, on p. 382, it was said:

"And due process of law and the equal protection of the laws are secured if the laws operate on all alike, and do not subject the individual to an arbitrary exercise of the powers of government."

In Regan *vs.* Farmers Loan & Trust Co., 154 U. S., 362, on p. 410, it is said:

"The equal protection of the laws—the spirit of common justice—forbade that one class should by law be compelled to suffer loss that others may make gain."

See also Magoun *vs.* Ill. Trust and Sav. Bank, 170 U. S., pp. 283-298.

66 In Pembina Mining Company *vs.* Penn., 125 U. S., 181, the court, on p. 189, speaking of corporations, said:

"The equal protection of the laws which these bodies may claim is only such as is accorded to similar associations within the jurisdiction of the State. The plaintiff in error is not a corporation within the jurisdiction of Pennsylvania. The office it hires is within such jurisdiction, and on condition that it pays the required license tax it can claim the same protection in the use of the office that any other corporation having a similar office may claim. It would then have equal protection of the law so far as it had anything within the jurisdiction of the State, and the constitutional amendment requires nothing more."

Judged by this test the 14th amendment, as to the equal protection of the laws, has been violated. The National Council and the State Council were and are within the jurisdiction of Virginia, as well as the individual members. We were authorized to *exist* in this State. We are now allowed so to exist. We were virtually invited to remain under the Act of 1897-8, and virtually invited to establish subordinate lodges in this State. As residents and citizens of this State we continued such Councils and created others. We acted un-

der the protection of the laws as they then existed. Those laws gave us protection like other such orders. Now we alone have been picked out and it is claimed by the complainant that protection is to be denied and our rights destroyed. The act does not prohibit the Order from existing in the State, but undertakes to hamper us in a manner in which it does not treat other similar Orders, and to authorize a rival organization to take its place, as the Order of the J. O. U. A. M., usurping our rights, privileges, name, seal and ritual. We have not had an equal protection of the laws according to the authorities. The State has thus injured us, notwithstanding the fact that the National Council came into the State, with the State's consent and subject to the State's jurisdiction, by creating subordinate Councils and a State Council out of the citizens of the State—notwithstanding the fact that the State itself chartered one subordinate Council and in the act of incorporation recognized the State Council.

In Barbier *vs.* Connelly, 113 U. S., 27, the court said, on p. 31:

"The Fourteenth Amendment * * * undoubtedly intended not only that there should be no arbitrary deprivation of life or liberty, or arbitrary spoliation of property, but that equal protection and security should be given to all under like circumstances in the
67 enjoyment of their personal and civil rights, that all persons should be equally entitled to pursue their happiness and acquire and enjoy property: that they should have like access to the courts of the country for the protection of their persons and property, the prevention and redress of wrongs, and the enforcement of contracts; that no impediment should be interposed to the pursuits of any one except as applied to the same pursuits by others under like circumstances; that no greater burdens should be laid upon one than are laid upon others in the same calling and condition," etc., etc. See also Allgeyer *vs.* Louisiana, 165 U. S., 589.

It appears from the language last quoted how broad is the protection of this provision in the 14th Amendment. We submit that we are undoubtedly within the scope of its protection, and that the act incorporating the complainant was in violation of this constitutional protection, and void.

In conclusion, we submit:

1st. That the provisions of the Constitution adopted at Minneapolis were within the powers of the charter of the National Council.

2nd. That the Constitution there adopted was adopted in the manner provided in the former Constitution.

3rd. That the Constitution has been recognized as valid by the Supreme Court of Pennsylvania.

4th. That the abandonment of the Order by the former members, who recognize and support the complainant, was without justification.

5th. That the complainant has never been duly organized, as the act contemplated an acceptance by *"all"* the members of the old State Council.

6th. That the complainant, if a corporation at all, is a corporation chartered for purposes different from those for which the defendants exist, and hence that in the creation of subordinate lodges they do not conflict.

7th. That the only points of conflict is as to the use of the *name, seal* and *ritual* of the Order.

68 8th. That the Legislature had no power to destroy the voluntary association, the old State Council, by the incorporation of a majority of the members of such association.

9th. That the minority had by law the right to retain the name for itself, no matter whether or not it could prevent others from using it.

10th. That it had the legal right to prevent others from using the name, seal and ritual.

11th. That the act incorporating the complainant is void, because it violates the provision of the Constitution of the United States, which prohibits a State from passing a law impairing the obligation of a contract.

12th. That the said act is void, because it violates that provision of the 14th Amendment of said Constitution, which declares that no State shall deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

Your petitioners therefore pray the decree complained of may be reversed, and that the prayer of their cross bills, as set forth in their answers, may be granted, and for such other relief as to this court may seem meet.

THE NATIONAL COUNCIL, JR. O. U. A. M.,
AND OTHER PETITIONERS,
By Counsel.

MEREDITH & COCKE.
J. C. WECKERT.
G. W. CRUMPECKER.

We, Meredith & Cocke, attorneys, practicing in the Supreme Court of Appeals, certify that we are of opinion that the decree complained of should be reversed.

MEREDITH & COCKE.

September 20, 1904.

An appeal with supersedeas is awarded. Bond, $300.00.

JAMES KEITH.

To Clerk Supreme Court of Appeals, Richmond, Virginia.

69 THE STATE COUNCIL OF VIRGINIA, JUNIOR ORDER UNITED AMERICAN MECHANICS, OF THE STATE OF VIRGINIA, a Corporation, Complainant,

vs.

THE NATIONAL COUNCIL OF THE JUNIOR ORDER UNITED AMERICAN MECHANICS OF THE UNITED STATES OF NORTH AEMRICA, a Corporation; E. L. S. BOUTON, JAMES R. MANSFIELD, E. H. HEATON, GEORGE B. SPROW, JR., J. E. BOEHM, O. B. HOPKINS, JAMES S. GROVES, E. R. BOYER, C. P. BLUNT, W. J. GIBSON, J. R. JEWELL, B. B. BOTT, J. R. N. CURTIN, and Their Successors as Officers of the Voluntary Association Mentioned and Referred to in the Bill of the *Plaintiff* as Having Been Organized at the City of Alexandria, in the State of Virginia, on or About the 2nd Day of March, 1901, and Certain Parties Unknown, Defendants.

VIRGINIA:

Pleas Before the Judge of the Chancery Court of the City of Richmond, the 21st day of July, 1904.

Be it remembered, that heretofore, to-wit, on the 29th day of June, 1901, came the plaintiff, by counsel, and sued out of the Clerk's Office of the Chancery Court subpœnas in chancery against the defendants, directed to the proper officers, and returnable to the 3rd Monday in July, 1901, which subpœnas in chancery and returns of the officers thereon are in due form.

And at another day, to-wit: At rules held in the clerk's office of said court, on the 3rd Monday in July, 1901, came the plaintiff, by counsel, and filed its bill, which bill and the exhibits therewith are in the words and figures following, to-wit:

Bill.

To the Honorable James C. Lamb, Judge of the Chancery Court of Richmond:

70 The State Council of Virginia, Junior Order United American Mechanics of the State of Virginia, a corporation, showeth unto your Honor the following facts:

Your orator is a corporation chartered by an act of the General Assembly of Virginia, passed on the 17th day of February, 1900. A copy of said charter, marked "A," is herewith exhibited as a part of this bill. It will be seen from clause 6 of said charter that the objects of said corporation are to maintain and promote the interests of Americans; to assist them in obtaining employment; to encourage them in business; to afford relief to the members thereof and their families in case of accident, sickness or death; to defray the expenses of their funerals or such other cases of distress as shall be defined by the Constitution, By-Laws, rules and regulations of the corporation. Your orator before its incorporation existed as an un-

incorporated organization, under the same name by which it was afterwards incorporated, and was subject by virtue of the customs of the Order to the control of the National Council of the Junior Order of United American Mechanics of the United States of North America, as far as the latter acted within the scope of its objects, charter, Constitution and General Laws, but no further. In the year 1869 the State Councils of Pennsylvania, New Jersey and Delaware, which were benevolent and patriotic organizations, met and created the aforesaid National Council of J. O. U. A. M., which will hereafter be referred to as the National Council, delegating to it certain rights and powers, within which it should be regarded and respected as the supreme head of the Order. Said National Council became incorporated by a decree of the Court of Common Pleas, No. 3, in and for the County of Philadelphia, Pa., on April 10th, 1893. A copy of said charter is herewith exhibited, marked "B," as a part of this bill.

The objects of the National Council are as follows:

First. To maintain and promote the interests of Americans, and shield them from the depressing effects of foreign competition.

Second. To assist Americans in obtaining employment.

Third. To encourage Americans in business.

Fourth. To establish a sick and funeral fund.

Fifth. To maintain the public school system of the United
71 States of America, and to prevent sectarian interference therewith, and to uphold the reading of the Holy Bible therein.

To these objects, fixed by the charter, and ex*h*isting also before the incorporation of the Order, there was added in the year 1897, in the manner prescribed by the Constitution of the Order, the following additional objects:

Sixth. To establish or erect an orphans' home for the orphans of deceased members of the Order and to maintain the same.

The National Council adopted at or about the time of its organization in 1869 a constitution and certain general laws for the promotion of the aforesaid objects. The Constitution was intended as the fundamental organic law of the Order, and has been so considered and acted upon by the membership of the Order.

In further promotion of the objects of the Order there are organizations known as State Councils of the Junior Order of United American Mechanics in most of the States of the Union, which are subject to the control of the National Council, within the scope of its objects, charter, Constitution and General Laws. There are also what are known as subordinate Councils, which are subject to the immediate control of the State Councils in a State where there is a State Council, but in a State where there is no State Council, to the immediate control of the National Council, which, within the limits aforesaid, is the supreme head of the Order.

The aforesaid six objects of the Order are the only legitimate objects, and they were the only objects, before and at the time of the session of the National Council at Minneapolis in June, 1899. They are the only objects which your orator as an unincorporated body, subject to the control of the National Council, ever recognized, or has at any time recognized, in its corporate capacity.

The said objects of the National Council cannot be legally altered, except as provided by the Constitution, nor can any article of the Constitution be altered, except in the constitutional method prescribed. Article 2, section 2, of the Constitution, as it existed at the time of and before the Minneapolis session in June, 1899, of the National Council, and as it still exists according to the only legal method by which a constitution, or constitutional changes, can be adopted, contain the following provisions in regard to alterations in the objects, Constitution and General Laws of the Order. Article 2, section 2, as follows: "The objects of this Order shall not
72 be altered unless proposed in writing, and if adopted, the alteration shall be submitted to the members of the Order for a vote thereon, and shall be of no effect unless approved by a majority vote." Article 25, is as follows: "Sec. 1. This Constitution or the General Laws of the Order shall not be altered or amended oftener than once in five years, unless approved by a two-thirds vote of the members present at a regular session of this National Council, or a special meeting called for the purpose; provided, all alterations or amendments shall be in writing, signed by two or more members of the National Council, and shall be referred to the Committee on Laws, before final action is taken thereon. Sec. 2. All proposed alterations or amendments shall be examined by the Committee on Law and reported to the National Council at its next session, together with such further amendments and recommendations as may be deemed necessary to preserve the consistency and sense of this Constitution and the General Laws; provided, that when the National Council refers the General Laws or Constitution of the National Council to a committee for revision, such reference shall be sufficient notice of any proposed alteration or amendment. Sec. 3. The action and recommendations of the committee shall be published at least thirty days prior to the next session of the National Council, when final action may be taken." (See pages 40 and 63 of Exhibit "C," herewith filed, to be read as a part of this bill, so far as it contains passages referred to and relied upon.)

Your orator avers that the objects, Constitution and General Laws of the Order cannot be lawfully altered, except in the manner above prescribed.

The National Council cannot be considered in any strict and accurate sense a representative body. It is composed of representatives from the State Councils, and of persons who have in the past been chief officers of the National and State Councils, known as past National Councillors and past State Councillors. The past National Councillors and Past State Councillors retain their membership and right to vote in the National Council for life, without being responsible to any *constituency for their actions.* The number of Past State and National Councillors is largely in excess of the representatives from the State Councils.

Your orator further shows to the court that on two different occasions prior to the Minneapolis meeting in June, 1899, of the National Council, an alteration of the aforesaid objects of the Order by the addition of an insurance branch, was adopted by the National Council, and submitted to the vote of the members of the Order, as

provided by Article 2, section 2, of the Constitution, but the
73 same on both occasions failed of effect, because they were not approved by a majority vote of the members of the Order, and thereby *concededly became and were inoperative and void.* The aforesaid efforts by the National Council to adopt an insurance branch of the Order in the manner provided by the Constitution and the only legal manner, having wholly failed, the said Council at its meeting held in Louisville, Ky., in 1898, referred the General Laws and Constitution of the National and subordinate Councils to a committee called the Law Committee, for general revision. This committee reported its work to the Minneapolis session of 1899. Without going into details, your orator avers that the Minneapolis session adopted the report, or rather a supplemental report, of the Law Committee, containing alterations in the objects, Constitution and General Laws of the Order of the most radical and rev[illegible]utionary character, without complying with the aforesaid constitu[illegible]nal requirements as to such alterations, and also in flagrant violation of the rules of parliamentary practice, as laid down in Mathias Manual, by which Article 22 of the Constitution requires the Council to be governed in the transaction of business. (Page 61 of Exhibit "C.")

Among the radical alterations thus illegally and unconstitutionally adopted are the following:

FIRST. AN INSURANCE BRANCH, which had, as already stated, been twice rejected when sought to be adopted by constitutional methods. This insurance branch, attempted to be foisted upon the Order, without having been submitted to the membership of the Order for approval, as the Constitution expressly requires, and without any other of the aforesaid constitutional requirements having been complied with, was started upon its career in five days from the close of the Minneapolis session. The sum of $5,000 of the funds of the Order was illegally and in violation of the rights of your orator, then an unincorporated organization, appropriated to said insurance branch, which fund was raised by a per capita tax upon the membership of the Order, and was incapable of being lawfully appropriated to any such object. Attention is called in this connection to section 2 of Law 31, p. 37 of Exhibit "C," which reads as follows: "The funds of a Council are accumulated by virtue of their charter as a Council of the "Junior Order United American Mechanics," that the fund is for the purpose of establishing a sick and funeral fund, and the payment of the necessary expenses of the Council, but where the mem-
74 bers of any Council, preparatory to disbanding, shall deliberately proceed to divide among themselves, with the evident intention of defrauding the Order out of that which was sacred to the purposes of relief, such members shall be devoid of the privilege of membership, all cards held by them shall be null and void, and any Council having received any of them to membership is in duty bound to prefer charges against them and expel them from membership."

Exhibit "D," herewith filed, contains the official proceedings of the National Council at the Minneapolis session in June, 1899, and such passages as are referred to or relied upon are prayed to be taken as a part of this bill. The attention of the court is called to Article

12 of the new Constitution, on page 19 of the Appendix, as to the establishment of the branch of Insurance; to pages 82 to 87, as to the fundamental laws adopted in relation thereto; to pages 190 and 191; and 207 as to the appropriation of $5,000 thereto. The said insurance branch was simply for the insurance upon lives, in no manner connected with the legitimate object of a sick and funeral fund.

SECOND. REGALIA.—Article 9, section 10, of the General Laws of the National Council previous to the Minneapolis session (see page 16 of Exhibit "C") provides that the law in reference to regalia shall not be altered by decision or otherwise, unless the proposed alterations be submitted to a vote of the members of the Order, and a majority vote be given in favor of such alterations." Recognizing the validity of this law, the National Council, at its session of 1874, desiring to alter the law in reference to Regalia, the proposed change was submitted to the members of the Order for a vote. The votes were opened and counted at the following session of 1876, and the changes became effective only upon approval by a majority of the member-ship of the Order. Yet the said Minneapolis meeting, in direct violation of the said General Law, struck out entirely sections 4, 5, 6, 7 and 8 and 10 of said Article 9 in reference to Regalia, besides changing section 9 without submitting its action to a vote of the member-ship of the Order. By striking out section 10, it sought to enable itself thereafter to exercise unrestricted power in changing the law upon the subject, from time to time, without submission to a vote of the members.

THIRD. NATIONAL JUDICIARY.—Your orator further shows unto your Honor that under Article 1, section 2, of the Constitution of the National Council, as it existed prior to the Minneapolis session of 1899, the National Council is the tribunal to which final ap-
75 peal shall be made on all matters of importance emanating from State or subordinate Councils. Ever since the organization of the National Council in 1869, by the laws, usages and customs of the Order, and under the aforesaid provision of its Constitution, all matters of controversy arising in the Order have been appealable to the National Council for final decision in the session as a body.

Your orator avers that those in control of the National Council at the Minneapolis session of 1899 illegally, and in violation of the Constitution and the long established customs of the Order, without submitting the alterations of the Constitution to the vote of the Order, deprived the State and subordinate Councils and the membership at large, of their constitutional right of appeal to the National Council as a body, and gave it to a tribunal which they undertook to establish, composed of three members, called the National Judiciary. The members of this illegally constituted tribunal were not made elective by the National Council, but must be appointed by the National Board of Officers, composed of the National Councillor, Vice-Councillor and Junior Past Councillor. (Page 15 Appendix of Exhibit "D.")

The National Judiciary, thus illegally created, is entirely independent of the National Council.

In violation of the Constitution it is given appellate jurisdiction

besides a large measure of original jurisdiction. (Page 15 of Appendix to Exhibit "D.") And its decisions are final.

That the establishment of this tribunal is a radical change in the organic law of the Order is admitted by the members of the Law Committee, which favorably reported it to the Minneapolis session. (Page 114, Exhibit "D.")

It was illegally established, without a compliance with any of the requirements of the Constitution in reference to the alteration of the Constitution or organic law, and is not and never has been recognized as a legal tribunal by your orator, since your orator was incorporated or by those comprising the State Council of Virginia before its incorporation.

FOURTH. CHANGE OF REPRESENTATION.—As already stated, the National Council is not in a strict sense a representative body, yet in so far as it is composed of representatives from the various States, the Minneapolis session changed the basis of representation in a manner so glaringly unjust as to amount to a fraud upon the rights of a large majority of the members. Under the Constitution and laws existing prior to the Minneapolis session, the State Councils of
76 New York, Pennsylvania, New Jersey, the District of Columbia and Virginia, comprising about 125,000 of the 183,000 members of the Order, were entitled to 59 representatives, which number was reduced to 28, while the remaining States and Territories aggregating about 65,000 members, were allowed 103 representatives. The States of Alabama, Kansas, Michigan, Minnesota, Montana, Nebraska, Oregon, Texas, Washington and Wisconsin, representing a total membership of 2,264, were given 30 representatives, while the five States above mentioned were only given 28.

Prior to the Minneapolis session the basis of representation was as is set forth in section 1, Article 4, of the Constitution. This basis was altered with the result as aforesaid by the adoption of section 2, Article 7 of the new Constitution. (See page 9 Appendix of Exhibit "D.")

The aforesaid alteration was without submission to a vote of the Order, or a compliance with any of the requirements of the Constitution in making alterations.

All of the foregoing unconstitutional, illegal and revolutionary measures were adopted by the Minneapolis session of the National Council, to go into effect immediately (Article 17, page 20 of Appendix to Exhibit "D") without submission to a vote of the membership of the Order, as required by section 2, Article 2, of the Constitution; they were adopted without being in writing, signed by two or more members, and referred to the Committee on Law, as required by Article 25, section 1; they were adopted without being published at least thirty days prior to the next session of the National Council, as required by section 3 of Article 25; and they were adopted in violation of section 1, Article 25, which forbids an alteration of the Constitution or General Laws of the Order oftener than once in five years, unless by a two-thirds vote of the members present at a regular session called for the purpose. At the time of said attempted alterations there had been constitutional alterations within five years next pre-

ceding, and said attempted alterations were not adopted by a two-thirds vote of those present, and they were adopted in flagrant, fraudulent violation of the parliamentary rules prescribed by Mathias Manual, which article 22 of the Constitution requires shall govern. They were adopted without the approbation and against the wishes of the Councils of Virginia, both State and subordinate, and against the wishes and approbation of at least two-thirds of the membership of the Order.

77 Your orator has exhausted all lawful means within the Order to obtain a redress of the aforesaid grievances and others not enumerated, but without success. At the Philadelphia session in June, 1900, of the National Council, your orator, by its Executive Committee, united in a petition with the State Councils of New York, New J-rsey, Pennsylvania and the District of Columbia to redress said grievances, but no regard was paid to said petition.

The National Council, at its session of 1892, adopted a resolution to have itself incorporated, and recommended the incorporation of all the State Councils. Many of the State Councils are incorporated, some of them having been incorporated before the National Council. The State Council of Virginia, representing about 10,000 members, applied through its executive officers, to the General Assembly of Virginia for a charter for its organization. The charter was granted by an act of the General Assembly, passed on the 17th of February, 1900, as above stated.

At a special meeting of the State Council of Virginia J. O. U. A. M. of the State of Virginia, duly called in accordance with the laws of the Order, on the 14th of March, 1900, at Smithdeal's Hall, Richmond, Va., a resolution was offered to accept the foregoing charter. The resolution was debated at length. A vote was taken and the resolution, in a full and regularly called meeting of the Council, was carried by a vote of 86 in the affirmative to 17 in the negative, all of which will more fully appear by the published proceedings of the special session of the State Council of Virginia J. O. U. A. M., herewith filed, marked Exhibit "E," and prayed to be taken as a part of this bill. Your orator thus became an incorporated body. The attention of the Court is called to the following features of your orator's charter and circumstances in connection therewith:

First. It embraces all of the members of the State Council of Virginia Junior Order United American Mechanics.

Second. Your orator is made the supreme head of the Order in Virginia.

Third. Your orator is given full and exclusive authority and jurisdiction to grant charters to subordinate Councils, and to make such constitutions, by-laws and rules of the Order as it may deem just and proper for the government of subordinate Councils.

Fourth. At a full meeting of the State Council, regularly called, the charter was accepted by an overwhelming majority. The vote was 86 in the affirmative to 17 in the negative. This small
78 minority apparently acquiesced in the vote of the large majority.

Yet your orator avers that E. L. S. Bouton, James R. Mansfield,

E. H. Heaton, George B. Sprow, J. E. Boehm, O. B. Hopkins, James S. Groves, E. R. Boyer, C. P. Blunt, W. J. Gibson, J. R. Jewell, B. B. Bott and J. R. N. Curtin, and others to your orator unknown, in league and sympathy with those in control of the Minneapolis session, and who desire to foist upon the Order the illegal objects and laws aforesaid, organized on or about March 2, 1901, at Alexandria, Virginia, a new State Council of Virginia by the same name, or substantially the same name, as that of your orator.

They deny that your orator is the supreme head of the Order in Virginia, and deny the validity of your Orator's charter, and are doing everything in their power to destroy the corporation thereby created, and prevent its successful operation under its charter.

Said new State Council was organized for the same, or substantially the same, purposes for which your orator existed as an unincorporated organization, and was afterwards chartered; and also for the promotion of the unconstitutional purposes aforesaid, wholly foreign to the objects of the Order. Your orator charges that said organization is wrongful and illegal, and in direct conflict with and impairment of the rights of your orator under its charter, and is also in conflict with and impairment of the rights of the State Council of Virginia Junior Order United American Mechanics of the State of Virginia before its incorporation, and which are preserved in its corporate capacity.

The legislative charter of your orator makes your orator the supreme head of the Order in Virginia, and secures and protects it in its legitimate control over the subordinate Councils, and in the promotion of the legitimate objects of the Order.

Your orator has been informed and charges that said new State Council intends to grant charters to subordinate Councils in Virginia, this being one of the admitted functions of a State Council, and is seeking to acquire control over the subordinate Councils subject to the control of your orator, and is seeking in other ways to usurp the exclusive rights and functions of your orator both under its charter and as it existed before its charter.

Your orator has been informed and charges that said new State Council or organization is attempting to collect and is collecting moneys to which your orator is entitled, and which otherwise would be paid to your orator, and for that purpose said organization is using the name of your orator. As tending to support these charges, Exhibits "F" and "G" are herewith filed as parts of this bill, being printed circulars addressed by certain members and sent to every subordinate Council in the State. Notwithstanding the
79 boastful pretense to the contrary in Exhibit "G," the State Councils of New York, Pennsylvania and New Jersey and the District of Columbia, representing about 115,000 out of a total membership of 183,000, are at this time in suits pending, asserting the right for which your orator is contending, with every assurance and in full confidence of success. The sick and death benefits paid in this State out of the treasuries of the various subordinate Councils now subject to the exclusive jurisdiction of your orator for the past fiscal year was $27,535.05, and for several years previous about the

same sum. Said new State Council, which does not represent more than 24 subordinate Councils with a membership of about 2,300 out of 147 subordinate Councils with a membership of about 10,000 in Virginia, is illegally making every effort possible to collect taxes and dues to which your orator is entitled as the supreme head of the Order in Virginia, and if collected they will be applied, not in the manner as heretofore, to the sick and death benefits in this State, but in a large measure to the illegal and unconstitutional measures above enumerated adopted at the Minneapolis session.

The principal officers of your orator are, and were before its incorporation, known by the appellation State Councillor, State Vice-Councillor, State Council Secretary, State Council Treasurer, and Junior Past State Councillor. Defendants have elected officers, giving them precisely the same appellations as the above set forth, by which they are known, and assigned to them the same respective duties as heretofore discharged by the plaintiff's said officers. The following were so elected defendant's officers, and are acting as such to the impairment of your orator's rights and its irreparable loss, State Councillor, E. L. S. Bouton; State Vice-Councillor, James R. Mansfield; Junior Past State Councillor, E. H. Heaton; State Council Secretary, George B. Sprow; State Council Treasurer, J. E. Boehm.

Your orator duly adopted a seal, the impression of which is as follows:

(Impression of Seal.)

Your orator has been informed and charges that the New State Council of Virginia, Junior Order United American Mechanics of the State of Virginia, has adopted a seal which is the same, or
80 substantially the same, as that of your orator, the impression of which is as follows:

(Impression of Seal.)

Attest: GEORGE B. SPROW, JR.,
State Council Secretary.

About 9 of said subordinate Councils are in the City of Richmond, with a membership residing therein of about 1,500, all of which Councils, except one with a membership of about 150, recognizes the control of your Orator; and the acts hereinafter prayed to be enjoined are being done and apprehended in said city.

For as much as your orator is properly relievable only in a Court of Equity, your Orator prays that the National Council of the Junior Order of United American Mechanics of the United States of North America, the aforesaid E. L. S. Bouton, James R. Mansfield, E. H. Heaton, George B. Sprow, J. E. Boehm, O. B. Hopkins, James S Groves, E. R. Boyer, C. P. Blunt, W. J. Gibson, J. R. Jewell, B. B. Bott, J. R. N. Curtin, and others to your Orator unknown, may be

made parties defendant to this bill and required to answer the same, but an answer under oath is waived. May your Honor declare the said organization, the new State Council, to be illegal, and your Orator's Charter to be valid; may said defendants be enjoined from continuing the use of the name State Council of Virginia, Junior Order United American Mechanics of the State of Virginia, or any other name of like import, likely to be taken for that of your Orator, and from the use of the Seal, and from carrying out the objects for which they were organized; and from using the name of your Orator, or any other name of like import, in the pursuit of any of the objects for which your Orator was chartered. May said defendants under the name of your Orator, or any name of like import be enjoined from granting Charters to subordinate Councils, and then representing themselves to subordinate Councils as the head of the Order in this State, and from interfering in any way with the pursuit by your orator of its objects and purposes. May they be restrained from designating their officers by the appellations above set forth as those used by your Orator for its officers or agents. May those already elected, as above stated, be restrained from using the aforesaid appellations, and may your Honor grant such other further and general relief as to equity may see meet and the nature of your Orator's case requires.

81 And your Orator will ever pray, &c.

THE STATE COUNCIL OF VIRGINIA, JUNIOR ORDER UNITED AMERICAN MECHANICS OF THE STATE OF VIRGINIA,

By Counsel.

SAMUEL A. ANDERSON,
A. J. MONTAGUE.

F. C.

STATE OF VIRGINIA,
City of Richmond, to-wit:

I, James Lewis Anderson, a notary public in and for the city and State aforesaid, do certify that E. T. Keeton this day personally appeared before me in said city and made oath that he is Past State Councillor of the State Council of Virginia, Junior Order United American Mechanics of the State of Virginia; that as such he is a member of the National Council Junior Order United American Mechanics of North America; that he has attended all of the meetings of the National Council, beginning with the session of 1893 in Detroit, up to and including the session of 1899 in Minneapolis; that he has carefully read the foregoing bill of the State Council of Virginia J. O. U. A. M. of the State of Virginia against the National Council J. O. U. A. M. and others; that he has knowledge of the facts therein stated, and knows them to be true; and that the exhibits are what they appear to be and are claimed to be in said bill.

Given under my hand this 18th day of May, 1901.

JAMES LEWIS ANDERSON,
Notary Public.

EXHIBIT "A."

Filed with the Bill.

Charter.

1. Be it enacted by the General Assembly of Virginia, That Floyd A. Hudgins, R. E. Criddle, Davis Bottom, Thomas B. Ivey, G. W. Kinsey, W. D. Hill, and all other members of the said State Council of Virginia, Junior Order United American Mechanics, and such other persons, whether minors or adults, as may hereafter
82 become members thereof, are hereby created a body politic and corporate (which shall be the supreme head of the Junior Order of United American Mechanics in the State of Virginia), by the style, name and title of the State Council of Virginia, Junior Order of United American Mechanics of the State of Virginia, and by that name shall have perpetual succession, may contract and be contracted with, sue and be sued, may acquire, receive and hold any real, personal or mixed property or estate, of any kind or description whatsoever, by gift, grant, bargain and sale, will, devise or bequest, from any person or persons, or corporation or society, or association whatsoever; and may grant, bargain and sell, rent, lease, loan out, mortgage, improve, or dispose of, and in general do all things which may be lawful and necessary for the well being and proper management of the corporation; provided, that the real estate of which the said corporation shall at any time be possessed, shall not exceed the clear annual value of twelve thousand (12,000) dollars.

2. That the said corporation shall have the power to make such constitutions, laws, by-laws, rules and regulations, as shall be necessary for its government and a promotion of the principles of the said corporation.

3. That the said corporation shall have full and exclusive authority and jurisdiction to grant Charters to subordinate Councils, Junior Order United American Mechanics, in the State of Virginia, with power to revoke the same for cause; to make such constitutions, by-laws and rules of order as said corporation may deem just and proper for the government of said subordinate Councils.

4. That the officers of said corporation shall be such as said corporation may deem necessary, and they shall be elected at such times and places, and in such manner as the rules and by-laws of said corporation may prescribe.

5. That the present officers of the State Council of Virginia, Junior Order United American Mechanics of the State of Virginia, shall continue in their respective stations until an election shall be had under this act, and the constitution, by-laws, rules and regulations now in force shall be good and valid until altered, amended or abrogated by the said corporation.

6. The objects of this corporation shall be to maintain and promote the interest of Americans; to assist them in obtaining employment; to encourage them in business; to afford relief to the members
83 thereof and their families, in case of accident, sickness or death; to defray the expenses of their funerals, or such other

cases of distress as shall be defined by the constitution, by-laws, rules and regulations of this corporation.

7. This Act shall be in force from its passage.

Passed by the General Assembly of the Commonwealth of Virginia, February 17th, 1900, and accepted by the State Council of Virginia in special session assembled on March 14, 1900.

Exhibit "B."

Filed with the Bill.

Be it known that the subscribers, who, with their associates, comprise the National Council of the Junior Order of United American Mechanics, the supreme head of the Order in the United States of North America, which has been organized for beneficial and protective purposes, and among other things, for the advancement of the following objects, viz:

First. To maintain and promote the interests of Americans, and shield them from the depressing effects of foreign competition.

Second. To assist Americans in obtaining employment.

Third. To encourage Americans in business.

Fourth. To establish a Sick and Funeral Fund.

Fifth. To maintain the public school system of the United States of America and to prevent sectarian interference therewith, and to uphold the reading of the Holy Bible therein, are desirous of becoming incorporated agreeably to the Act of the General Assembly of the Commonwealth of Pennsylvania, entitled—an Act to provide for the incorporation and regulation of certain corporations, approved the twenty-ninth day of April Anno Domini, one thousand eight hundred and seventy-four and its supplements, and to that end they do hereby declare set forth and certify that the following are the purpose, objects, articles and conditions of the said Council for which they desire to be incorporated.

84 First. The name of the Corporation shall be "The National Council of the Junior Order of United American Mechanics of the United States of North America."

Second. The purpose for which the Corporation as formed is for the maintenance of a society for beneficial or protective purposes to its members from funds collected therein.

Third. The business of the Corporation is to be conducted in the City of Philadelphia.

Fourth. The Corporation is to exist perpetually.

Fifth. The names and residences of the subscribers are as follows:

John W. Calver, 448 Marshall St., Philadelphia.

Edward S. Deemer, Oak Lane, Philadelphia.

Samuel S. Sibbs, Somerton, Philadelphia.

John R. Fanshawe, Germantown, Philadelphia.

Evan G. Badger, 1234 South Broad St., Philadelphia.

The Corporation has no capital stock.

Sixth. The officers of the Corporation elected for the present year are:

National Councilor. James Cranston, Box 705, Pittsburg, Pa.
National Vice Councilor. H. A. Kibbe, New Brunswick, N. J.
National Secretary. E. S. Deemer, Oak Lane, Philadelphia, Pa.
National Treasurer. J. Adam Sohl, Baltimore, Md.
National Conductor. Fred Schaeffer, New York City.
National Warden. H. P. Fuller, Haverhill, Mass.
National Inside Sentinel. F. J. Stockwell, Sioux City, Iowa.
National Outside Sentinel. S. C. Anderson, Excelsior, Wash.
Junior Past National Councilor. J. R. Boblits, Baltimore, Md.
National Organizer. Stephen Collins, Pittsburg, Pa.

During the past year the business of the National Council is in charge of a Board of Officers consisting of the following:

National Councilor. James Cranston.
National Vice Councilor. Harry A. Kibbe.
Junior Past National Councilor. John R. Boblits, above named.

Witness our hands and seals this twenty-eighth day of Feb-
85 ruary, Anno Domini, one thousand eight hundred and ninety-three.

EDWARD S. DEEMER. [SEAL.]
JOHN W. CALVER. [SEAL.]
JOHN R. FANSHAWE. [SEAL.]
SAMUEL S. SIBBS. [SEAL.]
EVAN D. BADGER. [SEAL.]

COMMONWEALTH OF PENNSYLVANIA,
City and County of Philadelphia, ss:

Before me the subscriber, the Recorder of Deeds, in and for the City and County of Philadelphia, personally appeared Edward S. Deemer, Samuel S. Sibbs and John W. Calver, three of the subscribers to the above and foregoing Certificate of Incorporation of the "National Council of the Junior Order of United American Mechanics of the United States of North America," and in due form of law acknowledged the same to be their act and deed.

Witness my hand and official seal this tenth day of March, Anno Domini, one thousand eight hundred and ninety-three.

[SEAL.] JOSEPH K. FLETCHER,
Deputy Recorder of Deeds.

Decree.

In the Court of Common Pleas No. 3, in and for the City and County of Philadelphia, of December Term, 1892. No. 560.

And now this tenth day of April, Anno Domini, one thousand eight hundred and ninety-three, the within Charter and Certificate of Incorporation having been presented to me, a law judge of said county, accompanied by due proof of publication of notice of this application as required by the Act of Assembly in such case made and provided. I certify that I have examined and *pursued* the said

writing and have found the same to be in proper form, and within the purpose named in the class specified in section second of the Acts of the General Assembly of the Commonwealth of Pennsylvania, entitled—an Act to provide for the incorporation and regulation of certain corporations, approved this twenty-ninth day of April, Anno Domini, one thousand eight hundred and seventy-four, and the supplements thereto, and the same appearing to be lawful and not injurious to the community.

I do hereby, on motion of Frank M. Cody, Esq., solicitor
86 for the petitioners, order and direct that the said Charter of "The National Council of the Junior Order of United American Mechanics of the United States of North America," aforesaid, be and the same is hereby approved, and that upon the recording of the same of this Order, the subscribers thereto and their associates, shall be a Corporation by the name of "The National Council of the Junior Order of the United American Mechanics of the United States of North America," for the purposes and upon the terms therein stated.

[SEAL.] HENRY REED.

Recorded in the office for Recording Deeds, in and for the City and County of Philadelphia, in Charter Book No. 19, page 47, etc.

Witness my hand and seal of office, this eleventh day of April, Anno Domini, one thousand eight hundred and ninety-three.

[SEAL.] THOMAS GREEN,
Recorder of Deeds.

EXHIBIT "C."

(Filed with the Bill.)

Declaration of Principles.

The constant landing upon our shores of the hordes of ignorant, vicious and lawless criminals of the old world should be viewed with alarm by the loyal and patriotic citizens of this country.

We affirm a warm and hearty welcome to all emigrants who desire to better their condition and become a part and parcel of our nationality, but we have not one square inch of room for the anarchist, the socialist and nihilist, or for any one who is not willing to bow allegiance to that flag which is powerful enough to shield and protect them as well as us, in the exercise of all civil and religious liberty.

We affirm our devotion to the public school system of this country. We believe in compulsory education, and that all teaching in our schools should be in the English language, to the end that future generations may be able to take their places in the ranks of our country's workers, educated in the history, the customs and manners of Americans.

We guarantee to every man the liberty of worshipping God according to the dictates of his own conscience, and would give every

assistance to protect all in the exercise of this liberty, but we
87 object most strenuously to the interference of any church, no matter under what name it may exist, in the temporal affairs of this country.

We believe that the Bible should be read in our public schools, not to teach sectarianism, but to inculcate its teachings. It is the recognized standard of all moral and civil law, we therefore believe that our children should be educated in its teachings, but that no dogma or creed should be taught at the same time.

We believe that patriotism and love of country should be instilled into the hearts of children and that the sacred words of "Mother, Home and Heaven," our children should be taught that our flag is the symbol of all that makes a "home" for us. We would place a flag upon every public school in our land, and a Bible within, and the object lesson therein set forth should be a beacon light in every storm which threatens to engulf us.

In this noble and patriotic work we ask the cordial and hearty co-operation of all good citizens. In this grand work we need the helping hand of all organizations holding the same views and principles. We have no time for jealousies and biekerings, but with a united front we should march forward, shoulder to shoulder, remembering that, "United we stand, divided we fall."

In the strictest sense we are a national political organization, but we oppose with unanimity the slightest taint of part-anship. "Our Country" is our motto, and we keep this motto steadily before us. We are cognizant that there are great and powerful enemies within our midst, requiring the strictest surveillance of all who are at heart, word and in deed American. We, as members of this Order, affirm our allegiance to the objects of the Order, as paramount to any partisan affiliation and urge upon the membership harmonious, united and intelligent action in carrying out the principles.

* * * * * * *

General Laws for the Government of the Order and Observance of State and Subordinate Councils, Adopted by the National Council Junior Order United American Mechanics of the United States of North America.

LAW IX.

SEC. 10. The law in reference to regalia shall not be altered by decision or otherwise, unless the proposed alteration be sub-
88 mitted to a vote of the members of the Order, and a majority of the vote given in favor of such alteration.

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LAW XIII.

CONSTITUTION.

SEC. 1. Each State Council has the power to make their own Constitution, By-Laws and Rules of Order, also the Constitution and

Rules of Order of subordinate Councils under their jurisdiction, subject to the approval of the Committee on Law of the National Council, but they shall be of no effect if they conflict with the Constitution of the National Council or General Laws.

SEC. 2. Subordinate Councils under the jurisdiction of the National Council may make their own By-Laws in conformity with the Constitution of subordinate Councils furnished by this National Council and General Laws, subject to the approval of the National Council Committee on Law.

SEC. 3. Laws, Constitutions, etc., of State and subordinate Councils shall be presented in duplicate, and shall not take effect until approved by the proper authority.

SEC. 4. A law shall not be binding on a State or subordinate Council under the jurisdiction of the National Council, or a subordinate Council under the jurisdiction of a State Council until such State or subordinate Council has received an official copy of such law, signed by the proper officer and the seal of the superior body attached, or such other manner designated as official by the proper authorities.

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LAW XV.

RITUAL.

SEC. 1. Each State Council shall have power to require their presiding officer to instruct the members of the State Council in the unwritten work of the Order, in order to insure uniformity in the workings of the council..

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89 SEC. 7. The National Council expressly forbids the officers of subordinate Councils from carrying the charge books of the Order at any time about their persons, provided, that the removal of the same, in a box provided for that purpose by the proper officer, to and from the Council chamber to a place of safe keeping, is not included in said prohibition.

* * * * * * *

LAW XXII.

DEFUNCT COUNCILS.

SEC. 1. The National or State Councils have no power to investigate the affairs of a disbanded Council after such Council has been re-organized, and the only right those who receive the Charter have with its affairs previous to re-organization is to re-instate those formerly members who desire again to unite with the Order, unless other privileges are given at the time the Charter is restored. In the event of the disbanding of a Council the National or State Council under whose jurisdiction it may be, shall collect its Charter, private work, books and other property.

SEC. 2. Upon the dissolution of a Council, all moneys, books and other property of whatever kind, must be surrendered to the National or State Council having jurisdiction.

SEC. 3. This requirement cannot be evaded by the Council previous to dissolution disposing of their property and money by gift or otherwise.

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LAW XXXI.

INSUBORDINATION.

SEC. 1. The National Council knows no greater offence than wilful disobedience and persistent refusal to recognize the decision and lawful authority of a Court of Appeal, and the member who would be guilty of aiding or abetting such insubordination shall be deemed forever unworthy of membership and is excluded from the benefits of a final card.

SEC. 2. The funds of a Council are accumulated by virtue
90 of their Charter as a Council of the "Junior Order United American Mechanics," that the fund is for the purpose of establishing a Sick Fund, and the payment of the necessary expenses of the Council, but where the members of any Council, preparatory to disbanding, shall deliberately proceed to divide their funds and property among themselves, with the evident intention of defrauding the Order out of that which was sacred to the purpose of relief, such members shall be debarred from the privileges of membership, all cards held by them shall be null and void, and any Council having received any of them to membership is in duty bound to prefer charges against them and expel them from membership.

SEC. 3. A charge of insubordination is a charge against every member of the Council, and pending the consideration of the same no cards can be granted to any of the members thereof.

* * * * * * *

CONSTITUTION.

(Adopted at Asheville, June, 1894.)

ARTICLE I.

NAME AND POWERS.

SEC. 1. This body shall be known as "The National Council of the Junior Order of United American Mechanics of the United States of North America." It shall be the supreme head of the Order with power to make its own Constitution and laws, also rules and discipline and general laws for the observance and government of the entire Order.

SEC. 2. It shall also be a tribunal to which final appeals shall be made on all matters of importance, emanating from State or subordinate Councils.

SEC. 3. It shall have power to grant Charters to subordinate Councils in States or Territories not having a State Council, and when a State Council shall be instituted in the States where these Councils are located, then the State Council shall have full jurisdiction and authority over all subordinate Councils in such States.

SEC. 4. It shall have power to grant Charters to State Coun-
91 cils, which State Councils when so chartered, shall have full power and authority to grant Charters for subordinate Councils, and have control of the Order within their jurisdiction, subject to the regulations of this National Council.

ARTICLE II.

OBJECTS.

SEC. 1. First. To maintain and promote the interests of Americans, and shield them from the depressing effects of foreign competition.

Second. To assist Americans in obtaining employment.

Third. To encourage Americans in business.

Fourth. To establish a Sick and Funeral Fund.

Fifth. To maintain the public school system of the United States of America, and to prevent sectarian interference therewith, and uphold the reading of the Holy Bible therein.

SEC. 2. The objects of this Order shall not be altered unless proposed in writing and if adopted, the alteration shall be submitted to the members of the Order for a vote thereon, and shall be of no effect unless approved by a majority vote.

ARTICLE III.

ANNUAL SESSIONS.

The Annual Sessions of this Council shall be held on the third Tuesday in June of each and every year, at such place as shall be determined upon at the previous session.

ARTICLE IV.

MEMBERSHIP.

SEC. 1. This Council shall be composed of the officers hereinafter mentioned, five representatives from each State Council, where the membership in such State does not exceed five thousand and an additional representative for every additional three thousand
92 members, or majority fractional part thereof, all Past National Councilors in good standing, and one representative from each State under the jurisdiction of this National Council, who shall be a Past Councilor in good standing, who shall be elected annually; provided, that no State without a State Council shall be entitled to a representative, unless there are four Councils in said State, also all

Past State Councilors in good standing, and there shall be no representation by proxy.

SEC. 2. All Councilors of State Councils and all Past National Representatives in good standing, regularly admitted to this body, shall be entitled to seats, but not to speak or vote on any question, nor hold office or serve on committees.

SEC. 3. Representatives to the National Council shall be elected at the annual meetings of State Councils, and shall hold their offices for five years from the first regular session of this National Council succeeding their election, or until their successors have been elected.

SEC. 4. Each new State Council shall, at the institution of such State Council, elect five representatives to represent them in this body, one of whom shall serve for one year, one for two years, one for three years, one for four years, and one for five years; and at the expiration of such terms of office, each State Council shall elect one representative to serve one term of five years. Any representative may be recalled from his position for being in arrears in his subordinate Council, for inattention to the duties of his position, or for violation of law or trust, but he shall in all cases be entitled to a fair trial, and a majority of the votes of the members present shall be necessary for his removal, except in case of arrearages in his subordinate Council.

SEC. 5. Vacancies occurring in the delegation of any State Council shall be filled by the Board of Officers until an election can be held; provided, that no vacancy occurs under this section until the position has been filled by a regular election, held under the laws of the Order.

SEC. 6. All officers as provided in section 1, article V, standing and such special committees appointed to serve during the term, who are not sent as representatives, whose duty it shall be to report at the next succeeding session who shall attend, shall be allowed for their actual travelling and hotel expenses for such period of time as the
93 National Council may be in session, and it shall be the duty of the National Board of Officers, the National Secretary and the members of the standing and special committees to meet on or before the first day of the session of the National Council at the place of meeting of the National Council, and they shall be allowed for such expense incurred by them, and the National Board of Officers shall have the power to call a meeting of any of the standing and special committees at any time prior to the annual session, and as often as they may deem it for the benefit of the Order, and such committees (including members who may be National Representatives) shall be allowed for their travelling and hotel bill incurred by them in attending to the special meetings of such committees.

ARTICLE V.

ELECTIVE OFFICERS.

SEC. 1. The elective officers of this Council shall be a National Councilor, National Vice Councilor, National Treasurer, National Conductor, National Warden, National Inside Sentinel, National

Outside Sentinel and National Chaplain to be elected by ballot at the annual meeting in June, a National Secretary, whose term of office shall be for five years, to be elected at the annual meeting in June, from among those specified in art. IV., sec. 1. A majority of all legal votes shall be necessary to an election, and the voting shall continue until a choice is made.

SEC. 2. The nominee for National Councilor must have served a term as National Vice Councilor unless there are none so qualified.

SEC. 3. In the election of officers, the National Councilor shall put the question of the nomination of National Councilor, and the election shall proceed before the nomination of the National Vice Councilor, and so on with the other officers.

SEC. 4. During the progress of a ballot for an officer, no motion can be entertained, or debate permitted, except to extend the hour of the session.

SEC. 5. At the election of officers of this Council, each lawful member, as specified in art. IV., sec. 1, shall be entitled to vote. On ordinary questions the vote to be taken according to the usages of the Order.

94 ARTICLE VI.

REVENUE.

SEC. 1. The revenue of the National Council shall be: for State Council Charter, $1; Subordinate Council Charter, where there is no State Council, $25, including complete set of books and seal, expressage on same to be paid by the National Council.

For Travelling, Withdrawal, Dismissal and Admission Cards, $6 per hundred.

For Odes. Council and funeral, $1.50 per hundred.

For blank orders for pass word, 75 cents per hundred.

For certificates of membership, $50 per hundred; rituals, $1 per set. Funeral Ceremony, 25 cents per copy.

For emblems. For members, 75 cents each; $7.50 per dozen in lots of five doz. or more, $7.20 per doz.; for Past Councilors and Representatives to State Council, $1.25 each; for Representatives to the National Council, $1.50 each; for Past State Councilors, $1.65 each; for Past National Councilors, $1.90 each; for Past Councilors and Representatives to State Council, solid silver, $3.75 each; for monogram "D. N. C.," 75 cents each; for monogram "D. N. C.," solid silver, $1.00 each; all orders to be accompanied by the money.

Subordinate Councils under the jurisdiction of the National Council shall pay: For travelling, withdrawal and dismissal cards, $1 per dozen; for odes, Council and funeral, $2 per hundred; for blank orders for password, $1 per hundred; Certificates of membership, 75 cents each, with a discount of 10 per cent. for five or more; rituals, five in a set, $2.50 per set; funeral ceremony, 50 cents each.

SEC. 2. Each State Council and every subordinate Council not under the jurisdiction of a State Council shall pay to this National Council such per capita tax as shall be decided upon by the National

Council, upon the membership as reported by such State Council on the 31st day of December of each and every year, and by such subordinate Councils for the terms ending in the months of June and December, payable by State Councils yearly, on or before the 15th day of each and every year, and by subordinate Councils on the 1st day of February and August of each and every year. The per capita tax must accompany the reports.

95

ARTICLE VII.

Reports.

Sec. 1. Each State Council shall report annually, said report shall be received by the National Secretary, and must be accompanied with the tax, on or before the 15th day of April, the number of Councils chartered, re-chartered, reinstated, dissolved, charters forfeited, and the number of subordinate Councils under their jurisdiction, the number of members initiated, received by card, reinstated, suspended, expelled, withdrawn by card, deceased and lost by defunct Councils, and the total number of membership; the number rejected, the amount of money received and paid by subordinates for benefits and relief, also the total amount of money in the treasur-es (which shall include the cash in hand and all investments), the receipts of the State Council and the balance in their treasury, a list of their officers, Past National Councillors, Past State Councillors, Representatives and Past Representatives, together with their P. O. address, said report to be made up to and including the 31st day of December in each and every year, and for failure to comply with the above shall, after being notified by the National Secretary, pay a fine of $5 and denied representation in the National Council until all fines, etc., are paid; that this National Council cannot donate, remit or reimburse the said fine of $5 to any State Council.

Sec. 2. The subordinate Councils under the jurisdiction of the National Council shall report quarterly to the N. Secretary for the quarter ending March, June, September and December, as follows: The number initiated, reinstated, received by card, suspended, expelled, withdrawn by card, deceased, rejected, and the total number of members; their receipts, payments, and the worth of the Council. Should a Council fail to comply with the above within 30 days after the end of the quarter, they shall pay a fine of $5 and be denied representation in this body until per capita tax and fines are paid.

ARTICLE VIII.

Quorum.

Twenty members, representing not less than five States, shall constitute a quorum, but less than that number may adjourn to meet at a future time.

96

ARTICLE IX.

CHARTERS.

SEC. 1. All applications for charters must be addressed to the National Secretary, and shall be in the following form for a State Council charter:

.....189..

To the National Council, Junior Order United American Mechanics of the United States of North America:

This petition of ..... Councils respectfully represents that, in our opinion, the good of the Order requires the establishing of a State Council, and believing that it will advance the interests of the Order, we respectfully petition your honorable body to grant us a charter to open a State Council of the State of ....., to be located at ....., and under your jurisdiction.

(Signed) ——— ———, *P. C.*
——— ———, *P. C.*

Enclosed is the charter fee, $1, for a subordinate Council charter.

To the National Council Junior Order United American Mechanics of the United States of North America:

The undersigned, inhabitants of ....., believing the Junior Order of United American Mechanics to be well calculated to promote the interests of the American people (and there being no State Council in existence in this State), respectfully petition your honorable body to grant them a charter to open a subordinate Council under the title of ..... Council, No. ...., of the Junior Order of United American Mechanics, of the State of ....., to be located at ....., and under your jurisdiction.

Enclosed is the fee, $25, for charter, set of books and seal; expressage to be paid by the National Council.

Name. Age. Occupation. Residence. Birthplace.

SEC. 2. Each application for a State Council charter shall be signed by at least seven Councillors and Past Councillors, representing at least two-thirds of the Councils located in said State; and for
97 a subordinate Council charter by at least 20 white male citizens, born in the United States of North America, its Territories, or under the protection of its flag, the occupations and ages of the applicants and the States in which they were born, must be placed opposite their names; if there be any who were members of the Order, the name and location of the Council to which they were attached must be stated.

SEC. 3. A charter for a State or subordinate Council shall not be granted unless the application is accompanied with the charter fee.

SEC. 4. The National Secretary shall have power to grant warrants during the recess of this Council, and take such measures for the institution of Councils thus warranted as may be necessary.

SEC. 5. Each State in the Union shall be required to have five subordinate Councils organized previous to their being entitled to a State Council.

SEC. 6. Should the number of Councils in any State at any time become reduced to a less number than required in the previous section, either by dissolution or otherwise, the remaining Councils shall come under the jurisdiction of the National Council, the State Council charter be forfeited, and the books, papers, moneys, etc., revert to the National Council.

ARTICLE X.

NATIONAL COUNCILLOR.

The N. C. shall preside at all meetings of the National Council, and enforce the laws thereof. During the recess he shall have the general superintendence of the Order, with power to grant dispensations to State Councils or subordinate Councils under the jurisdiction of the National Council, when the good of the Order may require, except a dispensation to dispense with any of the objects of the Order, the admission of persons not qualified to membership, the General Laws and the use of regalia. (See Law XVII., General Laws.) He shall institute and furnish the National Secretary, for subordinate Councils, the quarterly password and explanation, and the annual password for State Councils, and decide all questions of law or order, upon an appeal to him by any State Council, or subordinate Council under the jurisdiction of the National Council, or any committee of this body. He shall fill the vacancies occasioned by death or otherwise, until an election shall be held. He shall
98 sign all orders on the N. T. drawn in accordance with a vote of this Council or Finance Committee. He shall sign all documents and papers which shall require his signature properly to authenticate them. He shall, at the written request of 25 members of this National Council, who shall be from at least seven different States, direct a special session to be held, and cause notice to be given to each member of this Council at least twenty days previous to the time of meeting, with a copy of the objects for which the meeting is called accompanying each notice. At the close of the annual session he shall appoint a Deputy National Councillor for each State in which the Order exists. He shall submit to this National Council at the annual session a full printed report of his acts, and he shall perform such other duties as shall be required of him by the laws of the Order. He shall visit State or subordinate Councils under the jurisdiction of the National Council when the interests of the Order demand it, and shall receive a salary of five hundred dollars per annum for his services, and traveling expenses in visiting.

ARTICLE XI.

NATIONAL VICE-COUNCILLOR.

The N. V. C. shall preside in the absence of the N. C., and in case of his death, resignation, disqualification, refusal or neglect in dis-

charging his duties, he shall perform all the duties incumbent on the N. C. until an election shall be held.

ARTICLE XII.

National Secretary.

Sec. 1. The N. S. shall keep a true record of all the proceedings of this Council, in a book provided for that purpose. He shall read or cause to be read, all communications, reports, petitions, etc., and attest all orders drawn on the N. Treas. by a vote of the Council or Finance Committee. He shall affix the seal of the Order to all documents when necessary.

Sec. 2. He shall furnish each State Council with the quarterly password and explanation and State Council password, as issued by the N. C. He shall furnish each subordinate Council under the jurisdiction of this National Council with the quarterly password and explanation, upon the receipt of their report and per capita tax.

99 Sec. 3. He shall keep just and true accounts between this Council and the several State Councils and subordinate Councils under this jurisdiction, and shall render to the National Council, at its annual session, a full report of all moneys received and paid out during the year, also the arrearages of each Council, and keep his books and papers at all times ready for inspection. He shall deliver up to the Council, when called on so to do, all books, papers and other property in his possession, belonging to this Council.

Sec. 4. It shall be the duty of the National Secretary to cause to be published, for the information of the officers and members of the National Council, thirty days before the meeting thereof, the action of the Committee on Law on all amendments, as reported to him by the committee.

Sec. 5. He shall have the whole of the private work of the Order, belonging to the National Council, in his possession, as also the books and papers, for safe keeping, and shall receive the sum of one thousand dollars per annum for his services.

Sec. 6. He shall give security in the sum of ten thousand dollars, the expense of said bond to be borne by this body.

ARTICLE XIII.

National Treasurer.

The N. T. shall hold all moneys received, subject to the order of this National Council, pay all orders drawn on him by this Council signed by the N. C. and attested by the N. S., keep a correct account of all moneys received and paid by him, have all his accounts posted up and ready for settlement, exhibit them to the Committee on Finance whenever they may require it, and make a full report at the annual session. He shall, whenever called on so to do, deliver up to the Council all books, moneys, and other property of the Council, and before entering upon the duties of his office, he shall give

approved security in the sum of twenty thousand dollars (the expense of the bond to be borne by this body), for the faithful performance of his duties as National Treasurer, the bond to be drawn and executed as directed by this National Council, and shall receive the sum of one hundred dollars per annum for his services.

100

ARTICLE XIV.

National Conductor.

To the N. Conductor is confided the duties of examining the members at the opening of each session. He shall have charge of all property not otherwise provided for.

ARTICLE XV.

National Warden.

The N. W. shall be the general messenger of the body during the session.

ARTICLE XVI.

National Sentinels.

The N. Sentinels shall attend the doors and admit none but those duly qualified, unless directed so to do by the N. C. or the Council.

ARTICLE XVII.

National Chaplain.

The duties of the National Chaplain shall be to open the National Council at its annual session by reading a portion of the Scriptures, offering a prayer, and such other devotional exercises as the National Council may determine.

ARTICLE XVIII.

Board of Officers.

The Board of Officers shall consist of the National Councilor, National Vice-Councilor and Junior Past National Councilor, whose duty it shall be to appoint all standing committees of three members each, viz: Law, Finance, Credential, Appeal and Transportation. And they shall also appoint a National Legislative Committee, to be composed of five members, to be appointed as provided in Section 4, Law XXX, General Laws; they shall also appoint a Special Organizer in States where the condition of the Order warrants them in so doing, said committee to serve until the next annual session, or until their successors are appointed, unless sooner removed.

101 And they also appointed a National Organizer whenever this National Council in annual session authorizes them to do so.

He shall be under the control and direction of said board, and shall render monthly an itemized statement of his expenses, the same to be paid upon approval of the Finance Committee. He shall be granted a vacation of two weeks' time at a time acceptable to him, and receive a salary of two thousand dollars per annum, payable monthly.

ARTICLE XIX.

Deputy National Councilors.

Sec. 1. He shall install the officers of the State Council in his jurisdiction.

Sec. 2. In States where there is no State Council, it shall be his duty to take charge and supervision of each subordinate Council in his jurisdiction, to promote harmony and brotherly love, to instruct them in the private work of the Order, to see that the laws, rules and ceremonies of the Order are observed and enforced, to decide all questions of law, usage and order, upon an appeal by any member or Council, subject to an appeal to the National Councilor and to perform such other duties as the National Council may require of him.

Sec. 3. In States where there is a State Council needing the aid of the National Council to maintain the Order in a prosperous condition, on request to the Board of Officers of the National Council by the Board of Officers of said State Council, the Deputy National Councilor shall render all the aid possible by circulating pamphlets, circulars and other literature furnished by this National Council for the extension of the Order. He shall continue to aid the Order in said State so long as his labors are in harmony with the Board of Officers of the State Council. Should his work not be acceptable to said board, it shall cease at once, and all expenses for mailing said literature shall be paid by this National Council.

Sec. 4. He shall be amenable to this National Council, and shall be subject to censure, removal, suspension or expulsion from the body for improper conduct as an officer, or for violation of law or trust.

102 Sec. 5. He shall continue in discharge of his duties during the term of the National Councilor unless removed by him for improper conduct in his office, or want of standing in his subordinate Council.

Sec. 6. He shall keep himself fully informed of the condition of the Councils in his jurisdiction, and shall visit such Councils as are located at a distance, when so directed by the National Councilor.

Sec. 7. A Deputy National Councilor may apply to the Board of Officers for advice and also to require a Council (in case said Council should refuse to do so) to comply with the laws, rules and ceremonies of the Order. Should a Council refuse to comply with the requirements of the Board of Officers, in such case, it shall be the duty of the Deputy to prefer against them, before the Board, a charge of insubordination by sending the same with all information, to the National Secretary.

SEC. 8. He shall be allowed for his services three dollars per diem, and all expenses for actual time in making visits when directed to do so by the National Councilor.

SEC. 9. Each Deputy National Councilor shall submit a report of his official acts and the condition of the Councils in his jurisdiction to the National Councilor twenty days previous to the annual session.

ARTICLE XX.

COMMITTEES.

SEC. 1. The Finance Committee shall examine and approve all bills, or report their inaccuracy, they shall examine the Secretary's books in connection with reports from State and subordinate Council; also the Treasurer's books and vouchers, submit a full report of the finances at each annual session, make out an itemized estimate of expenses and receipts for the ensuing year, suggest the amount of per capita tax for the ensuing year. They shall have power to advance such amount of money to any committee as in their judgment they may deem necessary to meet the actual expenses of such committee, incurred in the performance of their duties and perform such other duties as the National Council may from time to time direct. They shall be appointed from the town or city in which the National Secretary resides.

SEC. 2. The Appeal Committee shall examine all appeals relating to fact or evidence from decisions of State Councils or
103 subordinate Councils under the immediate jurisdiction of this National Council, when made in accordance with the Laws of the Order, and report their actions to this body for approval or rejection.

SEC. 3. The Committee on Credentials shall examine the credentials of all P. S. C.'s, S. C.'s and representatives, and report to this Council. After their acceptance by the body, the committee shall examine the new members in the private work of the Order, and if correct the chairman of the committee shall introduce them to this body for qualification.

SEC. 4. The Committee on Law shall examine and formulate all proposed alterations or amendments to the Constitution of the National Council or the General Laws, and also to the Constitution of subordinate Councils under the jurisdiction of the National and State Councils, and in their report suggest such further changes or corrections as may be deemed necessary to preserve the harmony and sense of said Constitutions and Laws. Sixty days prior to the session of the National Council the committee shall forward to the secretary of that body for publication a report of their action on all proposed alterations and amendments, referred to them at the previous session. They shall report all their official actions to the National Council at its next session. It is the duty of the Committee on Law to examine and approve the Constitutions and By-Laws of State Councils, Constitutions of subordinate Councils under the jurisdiction of State Councils, By-Laws of subordinate Councils under the jurisdiction of

this body, also Rules of Order of said Councils, and submit a Constitution for subordinate Councils under the immediate jurisdiction of this National Council (when so directed by this body), and all subsequent alterations or amendments thereto; provided, such Constitutions, By-Laws or amendments do not conflict with nor repeal this Constitution nor the General Laws of the Order. Such Constitutions, Laws or amendments shall not take effect until so approved. Each State and subordinate Council under the jurisdiction of the National Council, shall file with the Committee on Laws a copy of their Constitution and By-Laws. Amendments to same submitted to the committee for approval, shall in all cases be accompanied by a copy of the law sought to be amended, and must be in duplicate.

SEC. 5. Any refusal or neglect to comply with the foregoing requirements of the Committee on Law shall subject the State or subordinate Council to charges of insubordination.

104 SEC. 6. The Transportation Committee shall make all necessary arrangements, and secure the lowest possible rates, either by rail or water, for the comfortable transportation of the officers and members of this body to and from the annual sessions thereof, and report the arrangements made by them to the National Secretary forty days previous to the session. They shall render a written report of their proceedings to this body.

ARTICLE XXI.

RITUALISTIC WORK.

The control of the printing of the ritualistic work belongs exclusively to the National Council; a State or subordinate Council has not the power to print, or cause to be printed, any portion thereof. The power to adopt, change or amend the work in use is vested in the National Council.

ARTICLE XXII.

DEBATE.

This Council shall be governed in debate and in the transaction of business by Mathias' Manual, where there is no law of the Order to the contrary.

ARTICLE XXIII.

RESOLUTIONS, ETC.

Any resolution, proposition or recommendation relating to or effecting the principles of the objects of the Order, submitted to the National Council for adoption or endorsement, must be in writing, and signed by one or more members.

Nothing in this article shall be construed to permit the alteration or amendment of the objects, nor any portion thereof, nor this Constitution or the General Laws of the Order in any other manner than that prescribed by this Constitution.

ARTICLE XXIV.

National Legislative Committee.

Sec. 1. It shall be the duty of the National Legislative Committee to proceed by every honorable means to have legislation
105 enacted in the National Congress, and the several State Legislatures, controlling, restricting or prohibiting immigration; to effect uniformity in the naturalization laws of the several States, and also such legislation as will protect and promote the public school system, and to prevent sectarian interference therewith, and such other laws as may promote the objects and principles of our Order, and also to use every effort to have statutes on the subject as now exist or may be enacted, properly enforced, and also to endeavor to secure the co-operation of all other patriotic American organizations in our objects.

Sec. 2. All proposed legislation must be submitted to the Board of Officers for approval, and be recommended to the Order for action.

Sec. 3. In connection with the National Legislative Committee there shall be subordinate to it, State Legislative Committees, consisting of five members, to be appointed by the Board of Officers, as provided in Section 4, Law XXX., General Laws, to serve during the term of office of the Board or until their successors have been named.

Sec. 4. The National Legislative Committee shall create from among its members a sub-committee of one member to be known as the Correspondence and Press Committee, whose duty it shall be to collect, prepare and distribute literature bearing on the objects of the Order, to collate statistics and facts concerning immigration, to correspond with certain organizations and individuals in various parts of the country, and perform such other duties as occasion may require.

ARTICLE XXV.

Alterations.

Sec. 1. This Constitution or the General Laws of the Order shall not be altered or amended oftener than once in five years, unless by a two-thirds vote of the members present at a regular session of this National Council or a special session called for the purpose; provided, all alterations or amendments shall be in writing, signed by two or more members of the National Council, and shall be referred to the Committee on Law before final action is taken thereon.

Sec. 2. All proposed alterations or amendments shall be
106 examined by the Committee on Law and reported to the National Council at its next session, together with such further amendments and recommendations as may be deemed necessary to preserve the consisency and sense of this Constitution and the General Laws; provided, that when the National Council refers the General Laws or Constitution of the National Council to a committee for revision, such reference shall be sufficient notice of any proposed alteration or amendment.

SEC. 3. The action and recommendations of the Committee shall be published at least thirty days prior to the next session of the National Council, when final action may be taken.

(MEMORANDUM.—It is agreed that the foregoing is the Constitution adopted at Asheville, N. C., June, 1894.)

(Agreed Extracts from Exhibit "D," Filed with Bill.)

Third Day—Morning Session.

MINNEAPOLIS, MINN., *June* 22, 1899.

The National Council resumed its session, with the National Councilor, Brother Frank W. Pierson, presiding, assisted by the National Vice-Councilor, Brother Charles Reimer.

Prayer by the Chaplain.

The Law Committee presented the following report:

To the Officers and Members of the National Council, Jr. O. U. A. M., to meet in Minneapolis, Minn., June 20, 1899:

In accordance with a resolution adopted by the National Council at its annual session in Louisville, Kentucky, in 1898, we the undersigned, the Law Committee of the National Council, beg leave to submit a revision of the National Constitution and Laws of the Order. Excepting that pursuant to the order of the National Council, approving the recommendations of National Councilor Powell, that a judicial department should be established, we suggest no radical change in the Organic Law of the Order, except such changes as may be incidental thereto.

Believing it to be the part of wisdom, and especially in view of the proposed creation of a judicial department, we have sought to clearly define the functions of the several departments of govern-
107 ment, and to weed out of the Constitution all legislation and out of the Laws all statement of Organic principle.

We have labored under difficulties such as are inherent to the constitution of a National Law Committee, but submit herewith the result of, under the circumstances, our best effort.

Without pride of opinion as to any suggestion or recommendation, we seek, in the final result to be attained, the combined wisdom of the National Council assembled.

Respectfully,

H. H. EDDY, *Chairman.*
J. A. FLINT.

DENVER, *April* 14, 1899.

P. S. C. Collins, of Pennsylvania, moved that the National Council resolve itself into a committee of the whole, for the consideration of the report of the Law Committee.

A call for the ayes and nays was here made and ruled out by the National Councilor, when the following appeal was presented:

We hereby appeal from the action of the National Councilor in refusing to recognize a call for the ayes and nays.

CHARLES N. RAYMOND.
THOMAS SANGER.
E. T. KEETON.

The question be stated, "Shall the decision of the National Councilor stand as the judgment of this National Council," a division was called, resulting, ayes 76, nays 46; so the decision of the National Councilor was sustained.

The National Council then went into Committee of the Whole, with P. N. C. Powell in the chair.

At 11:50 o'clock the committee arose, reported progress to the National Council, and asked leave to sit again, which was agreed to.

The hour of the day having arrived, the National Councilor declared the National Council adjourned.

Attest: EDW. S. DEEMER,
National Secretary.

108 Third Day—Afternoon Session.

MINNEAPOLIS, MINN., *June* 22, 1899.

The National Council met pursuant to adjournment, with the National Councilor, Brother Frank W. Pierson, presiding, assisted by the National Vice-Councilor, Brother Charles Reimer.

P. S. C. Arthur, of Pennsylvania, moved that the National Council resolve itself into a Committee of the Whole, for the further consideration of the report of the Law Committee, which was agreed to.

The National Council then went into Committee of the Whole, with P. N. C. Powell in the chair.

Subsequently the committee arose, and through its chairman, reported a code of laws, as the result of the Committee of the Whole.

P. S. C. Collins, of Pennsylvania, moved that the report be accepted and the laws adopted, which was agreed to.

P. S. C. Collins, of Pennsylvania, moved to reconsider and that the reconsideration lie upon the table, which was agreed to.

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P. S. C. Cooper, of Texas, moved to take up the report of the Committee on Endowment; which was agreed to.

It is as follows:

Report of Committee on Endowment Rank.

MINNAPOLIS, MINN., *June* 20, 1899.

To the Officers and Members of the National Council, Jr. O. U. A. M.—Greeting:

We, your committee, appointed by virtue of the resolution presented at the thirtieth annual session of the National Council, held June, 1898, at Louisville, Ky., and which reads:

"Be it resolved that the National Council appoint a committee of three, whose duty it shall be to investigate a suitable plan of endow-

ment rank for this Order, said rank to be optional with the members, and that they report same to this body at its meeting in 1899," beg leave to present the following report:

Your committee, after thoroughly endeavoring to obtain the sentiments of the official and general membership of the Order, and believing the large majority of our membership to be in favor of the establishment of an insurance branch in connection therewith, and after giving careful consideration to all communications received from the various members of the Order, and as a result of our labor would present the following:

First. We recommend that the National Council establish an insurance branch in connection with the Order, which shall be known and designated as the "Beneficiary Degree."

Second. We would recommend that the Beneficiary Degree be managed and controlled by the National Council, through duly elected officers to be known and designated as the "Board of Control."

Third. We would recommend the following laws creating, defining and governing the Beneficiary Degree and the Board of Control:

Fundamental Laws Creating Beneficiary Degree and Governing Board of Control.

Composition of Board.

SECTION 1. In accordance with the laws of the Order, the National Council, Jr. O. U. A. M., possesses the power to create and establish a Beneficiary Degree thereof and to organize a Board of Control for its government and management, as hereinafter provided.

SEC. 2. The Board of Control shall be composed of the National Councilor, ex-officio, the National Vice-Councilor, ex-officio, and three members of the National Council, who shall be elected by the National Council, as follows: One member to be elected for a term of three years, one member to be elected for a term of two years, and one member to be elected for a term of one year, at all future sessions of the National Council one member to be elected for a term of three years to fill the then expired term.

Section 3 states how vacancies in Board may be filled.

Section 4 provides for annual meetings of Board.

Section 5 designates the three officers of the Board.

Section 6 to 17 prescribes the powers of the Board.

Section 18 prescribes how record of proceedings of Board and business done shall be kept.

Section 19 how funds to be invested.

Section 20 requires attendance upon National Council and annual reports thereto.

Section 21 prescribes term of office of President of Board and duties.

Section 22 prescribes duties of Secretary of Board.

Section 23 prescribes how grievances shall be heard and determined.

Section 24 prescribes form of seal for Board.

Amendments.

SECTION 25. These laws may be amended at any regular session of the National Council by a two-thirds vote thereof, providing all amendments shall be presented in writing on the first day of the session thereof, and action thereon shall not be taken on the day when presented, except by unanimous consent.

Respectfully submitted,

J. L. COOPER, *Texas, Chairman,*
A. G. BAINBRIDGE, *Minnesota,*
R. ATMAR SMITH, *South Carolina,*
Committee.

P. S. C. Collins, of Pennsylvania, moved to go into Committee of the Whole to consider the same, upon which the ayes and nays were called by several members, which the National Councilor refused to entertain. The motion of P. S. C. Collins was then agreed to, and the National Council resolved itself into a committee.

Subsequently the committee arose and reported that they had adopted the report of the committee without amendment.

P. S. C. Collins, of Pennsylvania, moved to adopt the report
111 of the Committee of the Whole. The ayes and nays were again called, and the National Councilor refused to entertain the call. The motion of P. S. C. Collins was then agreed to.

P. S. C. Collins, of Pennsylvania, moved to reconsider and the reconsideration lie upon the table, which was agreed to.

NATIONAL LAWS.

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DIVISION 1—NATIONAL COUNCIL.

CHAPTER II.

OF PERMANENT COMMITTEES.

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SECTION 8. The Committee on National Legislation shall proceed, by the exercise of every honorable means, to secure the enactment of laws by the Congress and the several State Legislatures, controlling, restricting or prohibiting immigration; effecting uniformity in the naturalization laws of the different States of the Union; protecting and promoting the interests of the public school system, and preventing interference therewith, and in general such laws as will best promote the objects and interests of the Order. For the more certain accomplishment of the purpose of its creation, the Committee on National Legislation may solicit and secure the co-operation of other American patriotic organizations. The committee shall at all times work under the direction of the National Board of Officers. The committee shall appoint from among its members a sub-committee

of one, to be known as the Correspondence and Press Committee, the duty of which it shall be to collect, prepare and distribute literature bearing on the objects of the Order; to gather statistics concerning immigration; to correspond with individuals or organizations in sympathy with the legislation which this Order may be promoting and to perform such other duties as occasion may require.

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DIVISION III.—NATIONAL JUDICIARY.

Chapter III.

Of the Judgment and Decree of the National Judiciary.

Section 1. The judgment and decrees of the National Ju-
112 diciary shall be binding upon all parties thereto, and shall be final, provided, that upon a satisfactory showing to it, made within thirty days of the rendering of said judgment or decree, the National Judiciary may order a rehearing or a retrial, as the case may be.

Sec. 2. Should any party to a decree of judgment of the National Judiciary fail or refuse to abide by, or perform the same, if a member, he shall be expelled from the Order. If a State Council or a Council, its charter shall be thereby revoked, and the National Councilor or State Councilor or Councilor having notice thereof shall immediately proclaim the same.

Sec. 3. In the event of the refusal or failure of a National Councilor, of a State Councilor, or of a Councilor, to make proclamation as prescribed above, if a National Councilor, he shall be subject to impeachment, and if a State Councilor or a Councilor, he shall be subject to removal from office, with inability thereafter to hold office, upon a decree to that effect of the National Judiciary, properly entered of record.

* * * * * * *

Chapter VI.

Of Procedure in General.

Section 1. The National Judiciary shall have power to prescribe and issue all writs and other process which may be necessary for the exercise of its jurisdiction and to declare the mode of framing and filing proceedings and pleadings, of taking and obtaining testimony, of entering and enrolling decrees and generally to regulate the whole practice before it, except as may be otherwise provided by law.

* * * * * * *

CHAPTER I.

DIVISION IV.—STATE COUNCILS.

ORGANIZATION.

SECTION 1. In any State, District, Territory, or other political division, under the sovereignty of the United States, a State Council may be organized upon an application, to be supported by the petition of five or more Councils located therein.

113 SEC. 2. Every such petition shall set forth the fact that each petitioning Council has, by a majority vote, authorized the petition; shall be signed by the Councilor and attested by the Recording Secretary under seal thereof.

SEC. 3. Such petition shall be addressed to the National Councilor and transmitted to the National Secretary, accompanied by the warrant fee required by law.

SEC. 4. Upon receipt of a petition herein provided for, the National Secretary shall forthwith record it and transmit the same to the National Councilor. If the National Councilor approve the application, he shall issue a warrant in accordance therewith. If he disapprove the application, or, for any reason, fails to take action thereon before the next regular meeting of the National Council, then both the National Councilor and the National Secretary shall report all the facts in the case to the said meeting of the National Council.

SEC. 5. The warrant, if issued, shall be sufficient authority for the organization and conduct of a State Council until revoked by the National Councilor or by the National Council, or until it be superceded by a charter.

* * * * * * *

SEC. 7. It shall be essential to the validity of the acts of a State Council that its warrant or charter shall be present and displayed at the opening session of each regular and special meeting thereof.

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SEC. 9. Upon the revocation of a State Council warrant or charter, as provided above, all sovereignty and jurisdiction granted thereby shall revert and be re-invested in the National Council as if no such State Council had been instituted.

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CHAPTER III.

CONSTITUTION.

SECTION 1. Immediately following the institution of a State Council, it shall proceed to the adoption of a State Council Constitution and Laws, provided that such Constitution and laws shall in no wise conflict with the Supreme Law of the Order.

114 DIVISION V.—COUNCILS.

Chapter II.

Organization.

Section 1. All applications for a Council warrant must be addressed to the State Council Secretary, or if the territory within which the proposed Council is to be situated be within the jurisdiction of the National Council, then to the National Secretary; shall be signed by not less than fifteen persons and be accompanied with the fee for Council warrant.

Sec. 2. The petition shall be in the following form:

To the S. C., S. V. C., Officers and members of the State Council of ——, Jr. O. U. A. M., or to the N. C., N. V. C., Officers and Members of the National Council, Jr. O. U. A. M., as the case may be.

The undersigned, white males, residents of ——, being native born citizens of the United States of America and believing the Junior Order of United American Mechanics to be well calculated to promote the interests of the American people, respectfully petition the —— to grant them a warrant to open a new Council to be called —— Council, No. —, of the Junior Order of United American Mechanics, to be located at ——, in the County of ——, and under your jurisdiction.

Enclosed is the warrant fee of ——.

Name.	Age.	Residence.	Occupation.	Birth Place.

Sec. 3. Warrants for the new Councils, upon the approval of petitions therefor, may be granted by the State Councilor, and charters for the same may be granted by the State Council in accordance with State Council Law enacted thereby.

* * * * * * * *

(Adopted at Minneapolis, June, 1899.)

Constitution.

Article I.—The Supreme Law.
115 Article II.—The Order.
Article III.—Plan of the Order.
Article IV.—Honors of the Order.
Article V.—Objects of the Order.
Article VI.—The Supreme Government.
Article VII.—The Legislative Department.
Article VIII.—The Executive Department.
Article IX.—The Judicial Department.
Article X.—State Councils.
Article XI.—Councils.
Article XII.—Insurance.
Article XIII.—A Uniform Rank.

Article XIV.—The Ritual.
Article XV.—Miscellaneous.
Article XVI.—Amendments.
Article XVII.—Adoption.

NATIONAL CONSTITUTION OF THE JR. O. U. A. M.

The National Council of the Junior Order of United American Mechanics, in regular convention assembled, being duly authorized thereto, and in order to foster the patriotism, promote the welfare and broaden the citizenship of the members of the Order, does ordain, declare and publish this National Constitution of the Junior Order of United American Mechanics:

ARTICLE I.

The Supreme Law.

Section 1. The National Constitution, and the laws enacted thereunder by the National Council, shall, in the precedence given, be the Supreme Law of the Junior Order of United American Mechanics.

ARTICLE II.

Of the Order.

Section 1. The Junior Order of United American Mechanics is and shall be, a secret, patriotic, fraternal organization, composed of white male persons born within, or under the protection of the flag of the United States, who may have been duly initiated into said Order.

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ARTICLE III.

Plan of the Order.

Section 1. The Order shall be constituted as follows:
1. A National Council.
2. State Councils, working under charters or warrants legally granted, and not suspended or revoked.
3. Councils, working under charters or warrants legally granted, and not suspended or revoked.

ARTICLE IV.

Honors of the Order.

Section 1. The honors of the Order shall be the following, and no others, viz:
1. Past National Councilor, to be conferred upon every National Councilor who shall have served out his official term.

2. Past National Representative, to be conferred upon every National Representative who shall have served out his official term.
3. Past State Councilor, to be conferred upon every State Councilor who shall have served out his official term.
4. Past State Representative, to be conferred upon every Representative to a State Council who shall have served out his official term.
5. Past Councilor, to be conferred upon every Councilor who shall have served out his official term.
6. The honors of Past Councilor may be conferred upon Council Secretaries, both Recording Secretary and Financial Secretaries, and Treasurers who shall have served three successive official terms.
7. At the institution of a State Council, the honors of Past Councilor may be conferred, as prescribed by law, by the instituting officer upon the members thereof not so qualified.
117 8. At the institution of a Council, the honors of Past Councilor may be conferred, as prescribed by law, by the instituting officer upon the member thereof elected to the office of Junior Past Councilor, and the members thereof elected as Representatives to the State Council, provided there be not enough members of the said Council then Past Councilors, to fill its quota.

ARTICLE V.

Objects of the Order.

1. To maintain and promote the interests of Americans and shield them from the depressing effects of unrestricted immigration; to assist them in obtaining employment and to encourage them in business.
2. To establish an insurance Branch and a Sick and Funeral Fund.
3. To uphold the American public school system, to prevent interference therewith and to encourage the reading of the Holy Bible in the schools thereof.
4. To promote and maintain a National Orphaans' Home.

ARTICLE VI.

The Supreme Government.

Section 1. The Supreme Powers of Government of the Junior Order of United American Mechanics are lodged in three departments—the Legislative, Executive and Judicial—and it shall, at no time, and in no wise, be lawful for those exercising the functions of one department to encroach upon or interfere with those of either of the other two, except as in this Constitution expressly permitted or directed.

ARTICLE VII.

The Legislative Department.

Section 1. The Supreme Legislative Powers herein granted are lodged in the National Council.

118 Sec. 2. The National Council shall be composed of all Past National Councilors in good standing and all Past State Councilors in good standing, who shall have attained that honor prior to July 1, 1901; of all officers of the National Council who may have been duly elected and installed; of all members of permanent committees; of three Representatives from each State Council, with one additional Representative for every ten thousand members or majority fraction thereof, and one Representative from each State under the jurisdiction of the National Council wherein there are at least four Councils in good standing.

Sec. 3. None other than a Past Councilor in good standing shall be eligible to membership in the National Council.

Sec. 4. Except as otherwise herein provided, one Representative to the National Council shall be chosen annually by each State Council, at the regular session thereof, who shall hold his office for a term of three years from the first regular session of the National Council succeeding his election. When and as an additional Representative is authorized under Section 2 of this Article, he shall be chosen in the same manner, and for the same term, as prescribed above.

Sec. 5. The Representative to the National Council, from a State under the jurisdiction of the National Council, shall be chosen annually, and in such manner as may be prescribed by law.

Sec. 6. Each new State Council shall, at the institution thereof, choose three Representatives to represent it in the National Council, one of whom shall be elected for one, one for two years, one for three years.

Sec. 7. The office of any Representative, National or State, may be vacated by the body electing him, for being in arrears in his Council, for conduct unbecoming a member of the Order, for inattention to the duties of his office, because of his Council not being in good standing with his State Council, and for violation of law or trust, but in every case, except that of being in arrears or of his Council not being in good standing with his State Council, the Representative shall be entitled to a fair trial, and a majority vote of those present shall be necessary to his removal.

Sec. 8. The officers of the National Council shall be:

A National Councilor,
A National Vice-Councilor,
119 A Junior Past National Councilor,
A Chief Supreme Judge.
A Supreme Judge,
A Supreme Judge,
A National Treasurer,
A National Secretary,

A National Conductor,
A National Warden,
A National Inside Sentinel,
A National Outside Sentinel,
A National Chaplain.

SEC. 9. Excepting the National Secretary, the elective officers of the National Council shall be elected at the regular meeting thereof, and the term of office of each shall be one year.

SEC. 10. The Secretary of the National Council shall be elected at a regular meeting thereof, and his term of office shall be five years. But the Secretary of the National Council in office at the time of the adoption of this Constitution shall serve out the term for which he was elected, unless sooner removed, as provided by law.

SEC. 11. The officers of the National Council shall be elected from the membership thereof, and in such manner and form as may be provided by law.

SEC. 12. The regular meeting of the National Council shall be held on the third Tuesday in June of each and every year, at such place as shall be determined upon at the preceding regular meeting, unless in an emergency the same be changed as provided by law.

SEC. 13. Twenty members of the National Council representing not less than five States, shall constitute a quorum, but a less number may adjourn from time to time.

SEC. 14. The Officers of the National Council, notwithstanding the fixed tenure of their several offices, shall continue in office until their successors are elected and installed according to law.

SEC. 15. The following powers are reserved to the National Council, viz:

1. To judge of the election and qualification of its members; to cause to be provided and adopted a Ritual, amendments thereof, and supplementary thereto.

2. To pass laws for its own government and protection, and to prescribe rules for the conduct of its business.

3. To define the powers and duties of its committees.

4. To establish and define the powers and duties of its officers, except as these may be fixed by the Ritual and the National Constitution.

5. To provide by law a revenue for the National Council.

6. To appropriate the money necessary for the maintenance of the National Council, the National Executive, the National Judiciary and the National Orphans' Home.

7. To establish the forms for installation and other ceremonies, not Ritualistic, and to regulate by law their promulgation and use.

8. To define offences against the Supreme Law, and to prescribe penalties therefor.

9. To provide by law for the revision, compilation and publication of the National Constitution, National laws, National Council proceedings, and such other matters and things as may be deemed essential to the good of the Order.

10. To provide by law for the compilation, publication and enforcement of the decisions and orders of the National Judiciary.

11. To grant charters to State Councils, and to provide by law for the issue, revocation, suspension, restoration and re-issue of such charters.

12. To grant charters to Councils under its jurisdiction in States where a State Council has not been instituted, and to provide by law for the issue, revocation, suspension, restoration and re-issue of such charters.

13. To provide by law for the institution of State Councils and of Councils.

121 14. To enact such laws as shall avoid a conflict between the Supreme Law and the Constitution and Laws of State Councils and Councils.

15. To require from State Councils, and Councils not within the jurisdiction of a State Council, such reports as may be prescribed by law, and to regulate the same.

16. To require from any officer of a State Council such reports, credentials or certificates as may be prescribed by law.

17. To prescribe by law the paraphernalia, emblems, jewels and insignia of the Order, and in like manner to control and regulate the use and sale thereof.

18. To control and regulate by law the use of the name and emblem of the Order, and the name of the National Orphans' Home.

19. To provide for the furnishing of all certificates of membership or honor, and receipts for dues, and to regulate their use, and to prescribe and furnish such other supplies as may be required by law.

20. To regulate by law the selection, promulgation and use of the passwords of the Order.

21. To prescribe by law what shall constitute good standing in the Order.

22. To define by law the status of suspended members, the control which may be exercised over them, and the methods by which they may regain membership.

23. To provide by law for the withdrawal from, or transfer of, Council membership.

24. To enact laws that shall be necessary to the execution of the powers lodged in the Supreme Government, the departments and officers thereof, by the National Constitution or any amendment thereto.

25. To prescribe by law qualifications for membership in the Order.

122 26. To provide by law for the impeachment and removal from office of the National Councilor or a Supreme Judge of the National Judiciary, and for the trial and removal from office of any officer of the National Council, other than the National Councilor, or a Supreme Judge; to define the offences for which such proceedings or either of them, will lie; to fix the penalties for conviction; but in no case shall such penalties go farther than removal from office and a disqualification to hold any office in the Order thereafter, nor shall such penalty be imposed except upon the affirmative vote by yeas and nays, to be recorded, of two-thirds of all the members

elected or appointed, as the case may be, of the tribunal which shall have been established for the trial thereof; and provided that conviction shall not interfere with the trial of the person for the same offense in any other body of the Order having jurisdiction thereof.

27. To enact laws for the promotion of the general welfare of the Order.

SEC. 16. All laws enacted by the National Council shall apply generally; shall be formulated as statutes, and shall be known as "National Laws," and when introduced, and while under consideration, shall be styled "proposals."

SEC. 17. A proposal shall embrace not more than one subject, which shall be clearly set forth in its title.

SEC. 18. No proposal shall become a statute until it shall have been read twice, once by title and once at length, and the two readings thereof shall be had upon two different sessions.

SEC. 19. No proposal shall become a law unless it shall have first been presented to the National Council in writing, referred to a committee, and reported therefrom and received the approval as to form, of the Law Committee, and no proposal shall be so altered or amended on its passage as to change its original purpose.

SEC. 20. No statute shall be revived or amended by reference to its title alone, but so much thereof as is revived or amended shall be re-enacted and set forth at length.

SEC. 21. A majority vote, by yeas and nays, of a quorum
123 of the National Council shall be required for the final passage of a proposal, and a proposal having failed to pass, no proposal embracing the same subject shall be in order at the same meeting of the National Council.

SEC. 22. The enacting clause of every proposal shall be as follows: *"Be it enacted by the National Council Junior Order United American Mechanics,"* and shall precede such proposal.

SEC. 23. All statutes shall take effect sixty days after final passage, unless therein otherwise provided.

SEC. 24. The resolving clause of every resolution shall be as follows: *"Be it resolved by the National Council Junior Order United American Mechanics,"* and shall precede such resolutions.

SEC. 25. No money shall be paid out of the treasury of the National Council, except in manner and form as provided by law.

SEC. 26. An explicit statement of all receipts and expenditures of the National Government shall be reported to the National Council by the proper officers thereof, and be included in the printed record of each regular meeting.

SEC. 27. The National Secretary shall cause to be kept a journal of the proceedings of the National Council, and such journal shall be published in such manner and at such times, as the National Council may by law provide.

SEC. 28. Nothing herein contained, nor anything contained in the Laws of the Order shall be so construed as to forbid the State Councils from providing and defining by law when the members are in arrears, also penalties therefor, and when members are non-beneficial.

ARTICLE VIII.

EXECUTIVE DEPARTMENT.

SECTION 1. The supreme Executive powers herein granted are vested in the National Councilor, who shall be chosen at the regular annual meeting for a term of one year, and in such manner as may be prescribed by law, and in a board of officers, to be composed of the National Councilor, National Vice-Councilor and Junior Past National Councilor.

124 SEC. 2. The National Councilor, at the time of his election, shall have served a term as National Vice-Councilor. Should there be no member of the National Council so qualified, any member may be elected.

SEC. 3. In case of removal of the National Councilor from office, or of his death, resignation or inability to serve, the duties of said office shall devolve upon the National Vice-Councilor.

SEC. 4. In case of the removal, death, resignation or inability to serve, of both the National Councilor and the National Vice-Councilor, the vacancy so created shall be filled in the manner provided by law.

SEC. 5. The National Councilor shall preside at all meetings of the National Council, and shall at all times enforce the National laws and decrees of the National Judiciary.

SEC. 6. Except as may be otherwise provided by law, the National Councilor shall fill by appointment any vacancy in an office of the National Council occurring in the *iterim* between its regular sessions.

SEC. 7. Following his installation into office, the National Councilor shall appoint and commission one Deputy National Councilor for each State Council, and may appoint and commission such special Deputy National Councilors as the good of the Order may require.

SEC. 8. The powers and duties of Deputy and Special Deputy National Councilors shall be such as may be prescribed by law, with such other duties as may be imposed by the National Councilor.

SEC. 9. The National Councilor shall, at the regular meeting of the National Council following his election or accession to office, report to the National Council all of his official acts during his incumbency, and shall accompany the report with information as to the state of the Order, and recommendations of such proposals for statutes, and such other matters or measures as he may deem necessary or expedient.

SEC. 10. The National Councilor may call special sessions of the National Council in the manner prescribed by law.

125 SEC. 11. The National Councilor shall have power in the *interim* between sessions of the National Council, and in the manner provided by law, to issue warrants for the institution of State Councils or Councils not within the jurisdiction of a State Council.

SEC. 12. Warrants issued by the National Councilor for the institution of State Councils or Councils shall be and remain in force

until suspended or revoked in the manner provided by law, or suspended by charters duly granted.

SEC. 13. The National Councilor shall have power to grant such dispensations as may be authorized by law.

SEC. 14. The National Councilor shall propose and proclaim, in the manner and at such times as may be provided by law, the passwords of the Order, and may change the same at any time that circumstances may, in his judgment, render such action advisable.

SEC. 15. The National Councilor shall sign, upon their enactment, all statutes and such other documents and papers as shall require his signature properly to authenticate them; and shall perform such other duties as may be required by National Law.

SEC. 16. The National Councilor shall receive such compensation as may be provided by law, which compensation shall neither be increased nor diminish during his term of office.

SEC. 17. In an emergency, of which he shall be sole judge, the National Councilor may, upon causing due notice thereof to be given to the several State Council Secretaries and Recording Secretaries of Councils under the jurisdiction of the National Council, change the time and place of holding the regular meeting of the National Council.

ARTICLE X. (IX.)

THE JUDICIAL DEPARTMENT.

SECTION 1. The supreme judicial powers herein granted are vested in one National Judiciary and in the judges thereof.

SEC. 2. The National Judiciary shall consist of three Supreme Judges, of whom two shall be a quorum. Not more than one
126 Supreme Judge shall be appointed from the same State.

SEC. 3. Every decree of the National Judiciary shall require a concurrence of two judges.

SEC. 4. The Supreme Judges shall be appointed by the National Board of Officers, and one of said judges shall be appointed by said Board of Officers as Chief Supreme Judge.

SEC. 5. The term of office of a Supreme Judge shall be for three years, provided that the National Board of Officers, in appointing Supreme Judges upon the adoption of this Constitution, shall appoint one Supreme Judge for one year, one Supreme Judge for two years, and one Supreme Judge for three years.

SEC. 6. A Supreme Judge at the time of his appointment shall be a member of the National Council in good standing, and at the time of assuming his office shall hold no office in a State Council, a Council, and no other office in the National Council.

SEC. 7. Should a vacancy occur in the National Judiciary between regular meetings of the National Council, the National Board of Officers shall fill the same.

SEC. 8. No Supreme Judge shall preside at the trial of any cause in which he shall have any interest other than that of a member of the Order, or at the trial if a cause, in the trial of which by an inferior tribunal he may have participated.

SEC. 9. The National Council may by law provide for the special appointment of a Supreme Judge to act during the trial of any cause or causes at which a regular Supreme Judge shall be unable, or shall fail to attend or to hear and decide upon any cause for the hearing of which a regular Supreme Judge may be incompetent.

SEC. 10. The National Judiciary shall have exclusive jurisdiction as follows:

1. Of controversies between State Councils.

2. Of controversies between State Councils and Councils under the jurisdiction of the National Council.

3. Of controversies between Councils under the jurisdiction
127 of the National Council.

4. Of controversies between Councils under the jurisdiction of different State Councils.

5. Of controversies between members of Councils under the jurisdiction of different State Councils.

6. Of controversies between members of different Councils under the jurisdiction of the National Council.

7. Of all controversies whatsoever, the character of which is such that there is no inferior tribunal having complete jurisdiction.

SEC. 11. The National Judiciary shall have original and appellate, but not exclusive, jurisdiction in all matters wherein is involved nonconformity to, violation or construction of, the Supreme Law of the Order.

SEC. 12. The National Judiciary shall have appellate jurisdiction both as to law and as to fact; but an appeal to the National Judiciary will lie only as may be provided by law, and may be prosecuted only under such rules of procedure as may be prescribed by the National Council.

SEC. 13. The National Judiciary may hold such regular and special sittings as may be prescribed by law, or may act by correspondence, and it may adopt and enforce such rules of practice and procedure for the conduct of its business as may not be in conflict with law.

SEC. 14. The Chief Supreme Judge may appoint a Recorder of the National Judiciary, whose term of office shall be for two years, and who shall receive as compensation one hundred dollars per annum, unless otherwise provided by law.

SEC. 15. The Supreme Judges of the National Judiciary shall have seats in the National Council, and shall be privileged to speak only upon matters affecting the organization, powers or procedure of the Judiciary.

ARTICLE X.

STATE COUNCILS.

SECTION 1. A State Council shall not be instituted with less than five Councils, each acting under a warrant or charter. But
128 when a State Council is instituted any Council within its territorial jurisdiction, and acting under a warrant or charter, shall become subject to its authority.

SEC. 2. None but Past Councilors in good standing shall be eligible to membership in the State Council, and Representatives thereto shall be chosen in such manner as may be prescribed by the State Council constitution or law.

SEC. 3. The jurisdiction of a State Council shall be the State, Territory, District or other political division in which the same is located and in no State, Territory, District or other political division, shall there be more than one State Council.

SEC. 4. Territory under the jurisdiction of the National Council may be temporarily placed under the jurisdiction of an adjacent State Council, when so ordered by the National Council or National Councilor.

SEC. 5. There shall be lodged in the State Councils, with respect to their several jurisdictions, all power, prerogative or authority not lodged in the National Council by the National Constitution.

SEC. 6. The officers of a State Council shall be the same as are prescribed by the National Constitution for the National Council, except that whenever the word "National" is used, the word "State" shall be substituted therefor, and their powers and duties shall be prescribed by the State Council except as these may be fixed by the Supreme Law.

SEC. 7. Except that of the Secretary, the term of the officers of a State Council shall be one year.

SEC. 8. Each State Council shall have the power to frame a Constitution for its own government and enact laws in conformity therewith for the government of Councils and members of the Order within its jurisdiction, provided that neither State Constitution nor State law shall be in conflict with the Supreme Law, nor abridge the rights or privileges of a member of the Order secured to him by the Supreme Law.

SEC. 9. No charter shall be granted to a State Council by the National Council until its Constitution shall have been reported
129 upon by the National Law Committee and approved by the National Councilor.

SEC. 10. A State Council may establish by its Constitution three departments of government, the Legislative, Executive and Judicial, and it shall at no time and in nowise be lawful for those exercising the functions of one department to encroach upon or interfere with those of either of the other two, except as in the State Constitution may be expressly permitted or directed. The Legislative Department shall be known as the State Council. The Executive Department shall be known as the State Councilor and the State Board of Officers. The Judicial Department shall be known as the State Judiciary.

SEC. 11. The regular annual meeting of the State Council shall be held at such time, not less than thirty days prior to the regular meeting of the National Council, and at such place as may be prescribed by law.

SEC. 12. At the opening session of every State Council the warrant or the charter of the same shall be displayed at the Station of the State Councilor.

SEC. 13. The warrant or the charter of a State Council may be suspended by the National Councilor, or by the National Council, in such manner and under such circumstances as may be prescribed by law.

SEC. 14. A State Council may provide by law that the Councils within its jurisdiction shall, or shall not, pay weekly benefits, and fix the amount thereof, or the determination of this question may be left to the Councils.

SEC. 15. A suspended warrant or charter of a State Council may be revived by the National Councilor or the National Council in such manner and under such circumstances, as may be prescribed by law.

SEC. 16. The warrant or charter of the State Council may be revoked only by the National Judiciary, the procedure thereto to be regulated by law.

SEC. 17. The Constitution and Laws of the State Councils
130 and of Councils which may be in force at the adoption of this Constitution, are hereby declared to be operative so far as they do not conflict with the Supreme Law as established by this Constitution.

ARTICLE XI.

COUNCILS.

SECTION 1. A Council shall be instituted only in the manner prescribed by the National Law, and shall exist only by virtue of a warrant or charter issued in accordance therewith; it shall consist of not less than ten members, seven of whom shall constitute a quorum, provided that the State Councilor may, by dispensation, authorize a less number to meet for a time to be prescribed by the State Law for the sole purpose of retaining the charter.

SEC. 2. A Council shall have and exercise subordinate authority and control over such territory as may be designated in its warrant or charter, subject to the Laws of the National or State Council, provided that the State Council or the State Councilor, in the *interim* between meetings of the State Council, may extend or restrict its said territory. But two or more Councils may be given concurrent territorial jurisdiction when located in the same city, town or county.

SEC. 3. The ritualistic officers of a Council shall be as designated in the Ritual. They shall be nominated, elected and installed, and vacancies in office shall be filled as provided by law. Except that of recording and financial officers and trustees, the official terms of such officers shall continue for twelve months from the first of January in each year, or until their successors are elected and installed, provided that State Councils may enact that such terms shall continue for six months from the first of January and the first of July in each year.

SEC. 4. A Council may elect or appoint such other officers as may be provided for by State Law.

SEC. 5. At each session of a Council its warrant or charter must be displayed.

SEC. 6. Except for the transaction of business in connection with the burial of the dead, it shall be unlawful for a Council to meet or to provide for any entertainment upon Sunday.

131 SEC. 7. Membership in a Council may be attained only as provided by the Supreme Law. Every person, claiming the rights, benefits and privileges of the Order, must be a member in good standing of a Council.

SEC. 8. Each Council shall provide for and pay, upon the death of a member not honorary thereof, in good standing, a funeral benefit of not less than twenty dollars.

SEC. 9. The warrant or charter of a Council shall not be suspended, revived or revoked except in the manner prescribed by the Supreme Law.

SEC. 10. It shall not be permissible for Councils in the same State, Territory, District, or political division to bear the same name, and hereafter it shall be unlawful for any Council to be named after a living person.

ARTICLE XII.

INSURANCE.

The National Council may, by law, provide for the insurance of the members of the Order.

ARTICLE XIII.

A UNIFORM RANK.

The National Council shall, by law, provide for the affiliation of a Uniform Rank with the Order.

ARTICLE XIV.

THE RITUAL.

SECTION 1. The Ritual of the Order shall be that as at present written, or such as may be prescribed by the National Council at a regular session, and upon a two-thirds vote taken by yeas and nays.

SEC. 2. The promulgation, issue, custody and use of the Ritual of the Order, shall be as prescribed by National Law.

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ARTICLE XV.

MISCELLANEOUS.

SECTION 1. All honors heretofore conferred under the Constitution and Laws of the Order are hereby perpetuated.

SEC. 2. Any attempt upon the part of a State Council, or of a Council, to enforce any law or constitutional provision in conflict with the Supreme Law, is hereby declared to be insubordination, and punishable as the National Council may by law provide.

SEC. 3. All Constitutions, Laws and Decisions of the National Council, and rulings of the National Councilor, except as in this Constitution otherwise specifically provided, are annulled.

ARTICLE XVI.

AMENDMENTS.

SECTION 1. A proposal, or proposals, to amend this Constitution, may be presented to the National Council at any regular meeting thereof, in such manner as may be prescribed by law. Such proposal, or proposals, may be taken under consideration and voted upon at such regular meeting, the vote to be by yeas and nays and to be entered upon the Journal. A majority of a quorum of the National Council voting in favor of adoption, the said proposed amendment or amendments shall be immediately transmitted by the National Secretary to the State Council Secretary of the several State Councils, and shall be by the National Secretary caused to be published in the several papers of the Order. It shall be the duty of each State Council Secretary to present such proposed amendment or amendments to the first regular session of his State Council following their receipt by him, and the State Council shall, before its adjournment, consider and vote upon the same, which vote shall be taken by yeas and nays and entered upon the Journal. A majority of the State Council voting for or against said proposed amendment or amendments shall be counted as one vote for or against the same. Immediately upon action being taken hereof by the State Council, the State Councilor shall sign, cause to be sealed and attested by the State Council Secretary and transmitted to the National Council Secretary, a full return of the result of said vote. Upon
133 the receipt by the National Council Secretary of returns from a sufficient number of State Councils to disclose the fact that a majority of the State Councils, acting under warrant or charter, have voted in favor of the adoption of any proposed amendment to the National Constitution, he shall accordingly inform the National Councilor, who shall, under the seal of the National Council, attested by the National Council Secretary, promulgate the same by proclamation to be published and transmitted to the several State Councils, whereupon the said proposed amendment shall be and become a part of the National Constitution in full force and effect.

ARTICLE XVII.

ADOPTION.

SECTION 1. From and after its adoption by the National Council this Constitution shall take effect, and be in full force.

* * * * * * *

(MEMORANDUM.—It is agreed that by Exhibit "E," filed with bill, it is shown that the plaintiff's legislative charter was accepted by the

State Council by a vote of 86 ayes and 17 noes, and that the plaintiff organized thereunder. Said meeting was held in Richmond, March 14, 1900.)

And at another day, to-wit: At a Court of Chancery for the City of Richmond, continued by adjournment, and held at the court room thereof in the City Hall in said City, on the 8th day of April, 1902.

In Chancery.

THE STATE COUNCIL OF VIRGINIA, JUNIOR ORDER UNITED AMERICAN MECHANICS OF THE STATE OF VIRGINIA, a Corporation, Complainant,

vs.

THE NATIONAL COUNCIL OF THE JUNIOR ORDER UNITED AMERICAN MECHANICS OF THE UNITED STATES OF NORTH AMERICA, a Corporation; E. L. S. BOUTON, JAMES R. MANSFIELD, E. H. HEATON, GEORGE B. SPROW, JR., J. E. BOEHM, O. B. HOPKINS, JAMES
134 S. GROVES, E. R. BOYER, C. P. BLUNT, W. J. GIBSON, J. R. JEWELL, B. B. BOTT, and J. N. CURTIN ET ALS., Respondents.

On motion of the defendants, The National Council of the Junior Order of United American Mechanics, of the United States of North America, a corporation; E. L. S. Bouton, James R. Mansfield, E. H. Heaton, George B. Sprow, Jr., J. E. Boehm, O. B. Hopkins, James S. Groves, E. R. Boyer, C. P. Blunt, W. J. Gibson, J. R. Jewell, B. B. Bott and J. R. N. Curtin, by counsel, the order entered at rules taking the plaintiff's bill for confessed as to the said defendants is set aside, and leave is granted them to file their answers to the plaintiff's bill, which is accordingly done; and thereupon the plaintiff made general replication to the said answers.

Answer of the National Council, Jr. O. U. A. M.

(Filed in Court under Decree of April 8, 1902.)

In the Chancery Court of the City of Richmond. In Chancery.

THE STATE COUNCIL OF VIRGINIA, JUNIOR ORDER UNITED AMERICAN MECHANICS OF THE STATE OF VIRGINIA, a Corporation, Complainant,

vs.

THE NATIONAL COUNCIL OF THE JUNIOR ORDER UNITED AMERICAN MECHANICS OF THE UNITED STATES OF NORTH AMERICA, a Corporation; E. L. S. BOUTON, JAMES R. MANSFIELD, E. H. HEATON, GEORGE B. SPROW, JR., J. E. BOEHM, O. B. HOPKINS, JAMES S. GROVES, E. R. BOYER, C. P. BLUNT, W. J. GIBSON, J. R. JEWELL, B. B. BOTT, and J. N. CURTIN ET ALS., Respondents.

The answer of the National Council of the Junior Order of United American Mechanics of the United States of North America, a corporation existing under the laws of the Commonwealth of Pennsylvania, in its own behalf and in behalf of the other defendants named in the bill of complaint, who are its agents and representatives, acting under its laws and authority, being officers and
135 members of the State Council of Virginia, Junior Order United American Mechanics, created by this respondent March 2, 1901, to the bill of complaint in the above styled suit.

This respondent demurs to the said bill of complaint and says that the same is insufficient in law.

This respondent, not waiving its demurrer, but insisting on the same and reserving to itself the benefit of all just exceptions to the said bill, for answer thereto, or to so much thereof as it is advised that it is material to answer, answers and says:

Your respondent, the National Council, denies the allegation that the powers, as at present existing, were delegated to it by the State Councils of Pennsylvania. New Jersey and Delaware. In 1869, there existed in three State Councils mentioned. These three State Councils in that year created a National Council and agreed as to what should then be the powers of said National Council, which was formed in accordance with such agreement. Thereupon the above mentioned three State Councils surrendered and abandoned their powers and independent existence, and took charters for themselves, respectively, from said National Council, and recognized that they existed and exercised all their subsequent powers under said National Council. After the above mentioned date, and prior to 1893, charters for State Councils were granted to subordinate Councils in many other States in the United States, among which was the State Council of Virginia. The State Council of Virginia obtained its charter, and has derived all the powers which it has claimed and exercised, until the present controversy, under and by reason of the State Council charter so obtained.

In 1892, the order determined that the National Council should become a body incorporated by law, and in 1893 it was so incorporated under the laws of Pennsylvania, a copy of which charter is herewith filed, marked Exhibit "A," and prayed to be made a part of this answer. Since such incorporation, the National Council has existed solely as an incorporated body under said charter.

The object- of the Order, prior to the Minneapolis session, are correctly stated in the bill of complaint. The respondent insists that the same have never been materially changed, and are now as follows:

"1. To maintain and promote the interests of Americans, and shield them from the depressing effects of unrestricted immigration; to assist them in obtaining employment, and to encourage them in business.

136 "2. To establish an Insurance Branch, and a Sick and Funeral Fund.

"3. To uphold the American public school system, to prevent interference therewith, and to encourage the reading of the Holy Bible in the schools thereof.

"4. To promote and maintain a National Orphans' Home."

This respondent denies that the Constitution was, prior to the Minneapolis session, the fundamental organic law of the *Order,* but insists that it was, until altered or amended by the National Council, the governing law of the *National Council,* and insists that the general laws promulgated by the National Council were the fundamental laws governing State and subordinate Councils. Your respondent denies that the six objects of the Order as expressed prior to the Minneapolis session are the only legitimate objects of the Order, and further insists that the said objects as modified in language by the Minneapolis session are equally legitimate and binding.

Your respondent insists that not only did the State Councils of Virginia, to whose powers the complainant claims to have succeeded, recognize the Constitution adopted at Minneapolis, but that, in fact, it did exist until the 10th day of January, 1901, under a charter granted to it by the National Council under the terms and provisions of the Constitution adopted at the Minneapolis session of 1899. A copy of the proceedings of said session is herewith filed, marked Exhibit "B," and prayed to be taken as part of this answer. Your respondent alleges that the facts of its existence and recognition of the proceedings of the Minneapolis session are as follows: It will be seen from the said pamphlet that by the Constitution and laws adopted at said Minneapolis session (see page 17, appendix, Exhibit "B") it was required that each State Council should at each of its meetings display its charter received from the National Council. The then State Council of Virginia, having lost or mislaid the old State Council charter, applied on the 18th day of September, 1899, to the National Council for a new charter in order that it might display the same at its meetings as required by the Constitution adopted at Minneapolis. It received such copy from the National Council and displayed the same as required as above stated at its next meeting, which was held at Cape Charles, Virginia, October 17 and 18, 1899, a copy of the proceedings of which session, so held,

is hereinafter filed as Exhibit "H," and prayed to be read as a part of this answer. Your respondent insists that not only was
137 this a recognition of the proceedings of the Minneapolis session and the Constitution and general laws thereat adopted, but that their charter, received as asked for, was displayed at such session of the State Council of Virginia, in accordance with the requirements above mentioned. Since said meeting, a majority of the said State Council has been in insubordination to the rules and requirements of the Order and of the National Council, although it has advertised itself to the world as a part of the National Order, having in nearly every edition of its official organ published the objects of the Order as declared at the Minneapolis session, and by such publication has recognized the validity of the action of the National Council at said Minneapolis session. A copy of said official organ, commonly called the *Virginia Courier*, containing such publication, is herewith filed, marked Exhibit "C," and prayed to be made a part of this answer.

Your respondent insists that the action of the National Council at its session held in Minneapolis in 1899 has been declared by a court of competent jurisdiction to be valid and binding on the Order. As above stated, the National Council was chartered under the laws of Pennsylvania, and is a corporation existing under the laws of that State. Shortly after the Minneapolis session litigation arose in the last named State between Derry Council, No. 40, Junior Order United American Mechanics and the State Council of Pennsylvania, in which suit the complainant insisted that the said acts of the National Council at its Minneapolis session were invalid. Upon the rendition of a decree in said suit by the court, an appeal was taken to the Supreme Court of the State of Pennsylvania. The last named court, at its May term, 1900, held that the adoption of the Constitution and National Laws at the Minneapolis session are valid and binding on the Order. A copy of said opinion of the Supreme Court is herewith filed, marked Exhibit "D," and prayed to be made a part of this answer.

Your respondent insists that the contention of the complainant that the objects of the Order should not be altered unless proposed in writing, and if adopted the alterations shall be submitted to the members of the Order for a vote thereon, and shall be of no effect unless approved by a majority vote, is a wrong construction of the Constitution of the National Council.

Your respondent is advised and insists that said Article II, Sec. 2, of the Constitution of the National Council, does not control or limit the powers given by Article XXV. of the same Constitution, which prescribes how alterations or amendments to the Constitution shall be made. The general power to alter and amend the Consti-
138 tution every five years is not affected or restricted by said Sec. 2 of Article II. That said Article XXV. does not require that the said amendments shall be submitted to the members of the Order, but "shall be referred to the committee on law before final action shall be taken thereon." And your respondent asserts that at said Minneapolis session the said requirement of Article XXV. was fully complied with.

Your respondent insists that the National Council is a representative body, elected from the members of the Order, and governed by representatives from State Councils and Past National and Past State Councilors.

Your respondent denies that the proceedings of the Minneapolis session contained alterations in the objects of the Order of a radical and revolutionary character, or were adopted in violation of the rules of parlimentary practice.

Your respondent insists that the loan of $5,000 which was out of the funds of the National Council, to the Beneficiary Degree, or Insurance Branch, was not illegal or in violation of the rights of any State or subordinate Council. Said Beneficiary Degree, or Insurance Branch, was not to be assisted by levying a per capita tax, and no one is required to take said degree, membership being purely voluntary on the part of a member of the Order. Your respondent insists that the $5,000 was not a gift or a subscription to the Beneficiary degree, but was a *bona fide* loan to said Beneficiary Degree, and, as such, does not constitute ground for such flagrant insubordination as that exhibited by complainants. Your respondent insists that the quotation of Sec. 2, Law XXXI, page 37, in said bili of complaint has no application to the funds of the National Council, or to those of a State Council, but applies only to those of a subordinate council.

Regalia.—Your respondent denies that in leaving out section- 4, 5. 6. 7, 8 and 10 of Article IX of the General Laws that it was in direct violation of the General Laws of the Order. Your respondent insists that the General Laws of the Order are merely the promulgations of the National Council, and that the National Council cannot restrict or limit the powers which it has under its charter; but that it necessarily reserved and had at all times such power as was given it by its charter and Constitution to amend or modify any general law which it might at any time promulgate, and your respondent insists that under said charter and Constitution in force prior to the session at Minneapolis, and especially Article XXV. of said Constitution, it had the right to make any modification or change which it might see fit to make, provided it was done in accordance with the requirements of Article XXV. of said Constitution, and your respondent insists that the modification of the General Laws relating to Regalia was enacted in accordance with the requirements of said Article XXV., and that tha same steps were taken as to the omission of the sections relating to Ragalia as were taken in regard to the modification of the language as to the objects of the Order.

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National Judiciary.—At the Minneapolis session your respondent divided the powers of government of the Order into three separate departments—executive, legislative and judicial—following the plan of our National Government, which was in promotion of the proper and intelligent transaction of the affairs of the Order. The complainant alleges that it was by the creation of the National Judiciary deprived of a constitional right, and admits that it was a matter contained in the National Council Constitution, which your respond-

ent insists it had a right to amend and did legally amend in accordance with Article XXV., which appears on page 139, Proceedings of the Asheville Session of the National Council, a copy of which is herewith filed as Exhibit "E," and prayed to be made a part of this answer. Your respondent insists that the allegation of the complainant that the said amendment should have been submitted to a vote of the membership is neither correct nor warranted by and provision in the Constitution of the Order, and that its creation was within the power of the National Council, and was created in accordance with the requirements of the Constitution. Your respondent admits that the National Judiciary is a new feature in the government of the Order, but denies that the creation of the Judicial department has infringed the rights of any member, and says it was established in the interests of justice and the intelligent administration of the affairs of the Order, and to save the time of the National Council at its annual sessions, in which the time consumed by appeals had become burdensome on the members and expensive to the Order.

Your respondent admits that the basis of representation was changed at the Minneapolis session, but denies all statemnts in said bill of complaint that the new basis of representation was unfair and unjust, and denies that said action was in violation of any provision of the Constitution of the National Council, but asserts that the same was done in conformity with the requirements of said Constitution. Your respondent alleges that at the session held at Louisville, Kentucky, which was the session preceding the Minneapolis session, there was referred to the Committee on Law a resolution to draft a
140 new set of laws and ritual for the Order. That committee made its report at the Minneapolis session, and the report, with modifications, was there adopted. Your respondent insists that the complainants have evidently misunderstood the provision of the Constitution of the Order when they assert in their bill of complaint that the report of the said committee was adopted without being in writing and signed by two or more members. Your respondent insists that the complainant would have seen that such a step was not required, where the General Laws or Constitution are referred to a committee for revision, had they read Sec. 2 of Article XXV., which contains the following language: "Provided, that when the National Council refers the General Laws or Constitution of the National Council to a committee for revision, such reference shall be sufficient notice of any proposed alteration or amendment." (See page 140, Exhibit "E.") Your respondent also insists that where there is such a general revision proposed, there is no law requiring the publication for 30 days; but your respondent asserst that in order that the members of the Order might have fair notice of such alterations, it was contracted with the printer that the report of the Committee on Law should be published 30 days prior to the Minneapolis session, and the report was mailed by the printer direct to the members of the National Council.

Your respondent admits that the proposed change as to the basis of representation was not submitted to a vote of the Order, and

asserts that there is no requirement in the Constitution for such submission. Your respondent again alleges that five years had elapsed since the last general revision, which was in 1894; that the revision of 1899 was in accordance with the law; that all alterations during the 5 years had been adopted by a two-thirds vote, and the National Council was acting within the scope of its powers and in compliance with the Constitution. Your respondent submits that the complainants have wholly misunderstood and misconstrued Article XXV., Sec. 1, of the Constitution as to what is meant by the words "oftener than once in five years." The complainant insists that the proper construction of that section is that whenever there shall be any amendment to the Constitution of the Order, that the period of five years must again begin to run from the date of the adoption of such amendment. Your respondent insists that this is clearly an incorrect construction of that section. Your respondent insists that the 5 years began to run from the date of the adoption of the Constitution, as Asheville, in 1894, and that after the expiration of these five years, the Constitution can be revised without being subjected to the requirements applicable to an
141 amendment which might be made previous to the expiration of said five years. The true meaning of that paragraph is that the Order should have the right at the expiration of five years to have a general revision as contemplated in Sec. 2 or said Article XXV., but that if, prior to the expiration of that period, the Order should see fit to make any amendments to the Constitution, such amendment or alteration should be adopted as provided by Sec. 1 of said Article XXV., or in other words, that there should be two methods of altering the Constitution of the Order; one applicable to a revision at the end of five years from the time of the adoption of the Constitution at Asheville, in 1894, and the other for any amendment at any session held before the expiration of five years. Your respondent insists that if the construction claimed by the complainant be the true one, one of the objects intended to be obtained by said Sec. 2 would be defeated, in that the adoption of any amendment would continue to prolong the said period of five years to such an extent that it would virtually defeat the provision contemplated by Sec. 2 of said Article XXV., as to a revision of the Constitution. Your respondent is advised, believes and so alleges, that as five years had elapsed between the adoption of the Constitution at Asheville in 1894, and the adoption of the Constitution at Minneapolis in 1899, it was authorized to proceed in the revision of the Constitution in the method prescribed in Sec. 2 of Article XXV., and it alleges that in the adoption of said Constitution at Minneapolis, it lawfully pursued that course.

As to the change of representation in the National Council, your respondent insists that the basis of representation cannot be made *equal*, and that the representatives of the complainant have never submitted an equal plan to the National Council. Your respondent has always desired an equitable basis of representation, and at the Philadelphia session of the National Council held in 1900, the basis of representation was again changed, and such change was made in

the interest of the complainant. (See proceedings of that session, which are filed herewith, marked Exhibit "F," and the same is prayed to be read as a part of this answer.) Your respondent alleges that the fairness of said basis of representation may be seen by an examination of the proceedings of the National Council held at Buffalo, N. Y., a copy of which is filed as Exhibit "G," and prayed to be made a part of this answer.

Your respondent denies that the action of the Minneapolis session was without the consent of the complainants. The old State Council was represented at that session, and their representatives remained throughout its entire length, and participated in its actions.

142 On page 117 of the proceedings of the Minneapolis session, Exhibit "B," it is shown that 6 of the 7 Virginia delegates voted to change the name of the Order; on page 192, a yea and nay vote in which they participated, and on page 206 appears a unanimous vote. Page 207 shows that one of the Virginia representatives voted in favor of the $5,000 loan to the Beneficiary Degree.

Your respondent denies the allegation that the complainants have exhausted all lawful means within the Order to obtain redress for their alleged grievances and insists that the means used by the complainants have been contrary to the theory, tradition and laws of the Order. Your respondent files herewith a copy of the proceedings of the session of the old State Council of Virginia held at Cape Charles in 1899, marked Exhibit "H;" a copy of the proceedings of the special session held at Richmond in 1900, marked Exhibit "I," and a copy of the proceedings of the session held at Roanoke in 1900, marked Exhibit "J," and the same are prayed to be made a part of this answer. On page 132, Exhibit "H," will be found a resolution withholding the payment of further per capita tax to the National Council until certain alleged grievances were rectified, which was an attempt to coerce the National Council into compliance with the demands of the old State Council by cutting of its revenue. On page 14, Exhibit "I," is a resolution to appoint a committee to seek an adjustment of the differences existing between the old State Council and the National Council. Instead of executing the mission for which it was appointed, the committee, on which the minority of the old State Council opposing any acts of insubordination to the National Council had no representation, went to Philadelphia and joined similar committees from other insubordinate jurisdictions in presenting a peremptory demand upon the National Council to rescind its action at Minneapolis and submit entirely to their will and wishes. This appears on pages 16–17, Exhibit "F." Prior to the Philadelphia session of the National Council, the then National Councilor, learning that the State Council would probably not send its representatives to that session, and desiring it to be fully represented in order that its alleged grievances might be properly presented, addressed the then State Councilor, requesting that the State Council be represented and assuring his every effort to obtain their admission, which letter and the action thereon appears on page 111, Exhibit "J." The Executive Board of the old State Council, instead of permitting the representatives whose expenses were to be paid by the National Council, to attend,

addressed the representatives, requesting that they would
143 not attend, and in said letter stated that by their own conduct they had lost their right to admission in the National Council. Your respondent insists that the said letter clearly shows that the said complainant instead of desiring to have its alleged grievances settled by fraternal conference, its intent and purpose was to prevent a result which should have been greatly desired, and which in its bill it pretends to have desired. Notwithstanding this action, two of the Representatives from Virginia, being in sympathy with the minority of the then State Council, did attend the Philadelphia session, and were admitted to the floor of the National Council (Exhibit "F," p. 8), which your respondent humbly conceives to be all that could be expected of it, consistent with its dignity and rights, as the Supreme Head of the Order, and also indicative of its willingness to hear and consider their differences and disaffection. At the Philadelphia session, not only was the basis of representation changed in the interest of the complainant, but many of the alleged grievances were earnestly considered and acted upon.

In addition to the above facts, showing the unfriendly spirit of the complainant to your respondent and its desire to prevent any settlement of the matters in dispute, the attention of the court is called to the action of the complainant at Roanoke, as it appears on page 10, Exhibit "J," by which it will be seen that a motion was made "That, notwithstanding the State Council of Virginia has had its charter incorporated by the General Assembly of the State, that it is yet a member of the National Council Jr. O. U. A. M., and its deliberations in convention will be conducted pursuant to the laws of the National Council," which motion was voted down by a large vote. Your respondent insists that such action also shows that the complainant declines to recognize your respondent as the National Council, and also is a declaration that it is no longer part of the National Order.

Your respondent also alleges that it will be seen by the Constitution adopted by the complainant at Roanoke at the meeting above mentioned, that it clearly declared that it had no connection with your respondent, the National Council, and that it is the supreme head of the Order in Virginia. (See Sec. 1, p. 20, Exhibit "J.") Your respondent is advised and alleges that by said acts and other of its acts which will be shown to the court in due time, it has clearly and positively declared itself to have no connection with the National Order, but to be a separate and independent order.

Your respondent is also advised, believes and so alleges, that even if the alleged grievances were real and *bona fide*, yet that the complainant has not taken the proper and legal course for proper remedy
and relief of the same. Your respondent alleges that the
144 proper course to have been pursued by the complainant, if your respondent, the National Council, had violated its charter, or attempted to exercise any power which did not belong to it, was to ask redress and relief in the courts, and your respondent also alleges that the said complainant, by undertaking to pursue the course which it has pursued, as above set forth, has

deprived itself of all right to complain of your respondent the National Council; has placed itself outside of the National Order, and has deprived itself of all right to object to the National Council proceeding as it has heretofore done in granting State Council charters and in recognizing the subordinate councils composing any State Council, and has also deprived itself of all right to the use of the name "State Council of Virginia, Jr. O. U. A. M.," and to exercise any rights, powers, privileges, ritual and emblem of the Order. Your respondent admits that the said complainant has obtained a charter from the General Assembly of Virginia, but denies that it gave to the complainant the rights and powers which it claims were granted it, to be the only organization having a right to exist in this State under the name of the State Council of Virginia, Jr. O. U. A. M., or to use the name of the Order, or exercise any of the rights, powers, privileges, rituals or emblems of the Order. Your respondent insists that in pursuing the course it did in obtaining the said charter is simply another proof of the determination on the part of the persons composing the complainant to absolutely sever its connection with the National Council, and to attempt to exist as a separate and independent order, and was not only in violation of its contract with and obligation to the National Council, but also in violation of the rights of the minority members of the old State Council and the many subordinate Councils who refused to participate in any of said acts of insubordination, but continued to recognize the supremacy of the National Council and its connection therewith. Your respondent denies that the complainant has any right to use the name under which it was chartered, and is advised, believes and charges, that the right to use said name or title is one of the rights belonging to the National Council, or Order, and which has belonged to it for a number of years, and which can only be used by such organizations as shall be created and authorized by the National Council to use the same.

Your respondent, the National Council, is the supreme head of the Order in the United States. (See Exhibit "A.")

Under its jurisdiction, subordinate Councils were first organized in Virginia, and when a sufficient number were in existence
145 a State Council was formed, to which a charter was duly granted, and under which the old State Council operated, as the complainant admits, until March, 1900, when complainant obtained a charter from the General Assembly, under which it now claims to exist and exercise its powers. A copy of the form of charters granted State Councils by the National Council is filed herewith, marked Exhibit "K," and prayed to be made a part of this answer. By the terms of this charter, State Councils are given the power to act as a State Council of the Order, to grant charters to subordinate Councils, to make laws, etc., provided the State Council always acts in conformity to the laws and usages of the Order and in obedience to the National Council. The acceptance of such a charter completed the contract between the old State Council and the National Council, a contract which your respondent, the National Council, has faithfully kept as to its part, and one that expressly

acknowledges the supremacy of the National Council. Notwithstanding the contract and obligations existing between the old State Council and your respondent, the National Council, the said complainant, obtained a charter of incorporation from the General Assembly of Virginia, under which it claims to have been absolved from all allegiances and obligations to your respondent, and by virtue of which it claims the right to retain the name, private work, emblems, regalia, and all other property of your respondent, and attempts to erect itself into a body independent of and to the exclusion of your respondent, and any State Council created by your respondent, from doing business or operating in Virginia, and at the same time retains all the benefits accruing to it by virtue of the contract between it and your respondent, the National Council. Your respondent respectfully represents that the Act of Assembly incorporating the complainant was an impairment of the obligation imposed by the contract existing between the complainant and your respondent, the National Council, in violation of Article 1, Sec. X, Par. 1, United States Constitution, and therefore null and void.

The said Act of Assembly is also in violation of Section 1 of the 14th Amendment of the United States Constitution, which reads, "nor shall any State deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

The old State, Council of Virginia, continuing insubordinate charges were preferred against it before the National Judi-
146 ciary, and it was duly summoned, and failing to appear, a decree was rendered against it, which, after giving due time for compliance with the terms thereof, became operative, and the charter of the old State Council was revoked. Copies of the docket entries, marked Exhibit "L," Journal entries, marked Exhibit "M," and Decree, marked Exhibit "N," are herewith filed, and are prayed to be made a part of this answer. The Decree will also be found on pp. 67–68, Exhibit "G." Your respondent also alleges that while this was the necessary step to be taken as to the old State Council for the maintenance and preservation of the Order in the State of Virginia, yet at the same time the National Council recognized as existing and operative the many subordinate Councils in said State which remained true to the Order and refused to participate in the acts of insubordination, and recognized the supremacy of your respondent, the National Council.

While a majority of the members of the old State Council representing as they did a number of the subordinate Councils in the State, were guilty of the acts of insubordination above stated, and were also guilty of the above mentioned acts looking to a separation of the State Council of Virginia from the National Council, and Order, and of the creation of a separate and independent Order in this State, yet a large minority of the State Council being representatives of many of the subordinate Councils in the State, opposed all such acts, attempted to prevent the same and have refused to be bound by said acts, and have continued to recognize the supremacy of the said National Council, and to remain a part of the National

Order. A large number of the subordinate Councils still recognize the authority of your respondent, the National Council, and refuse to recognize the organization created by the Act of Assembly chartering the complainant, and refuse to recognize or be bound in any way by the acts of the complainant. Your respondent also alleges that since the doing of the said insubordinate acts and the obtaining of the said charter, and the necessary act of your respondent, the National Council, in revoking the charter of the old State Council, the said large minority of the subordinate councils in the State did petition your respondent, the National Council, for a State Council charter, and for their embodiment and association under the name of and as the State Council of Virginia, Jr. O. U. A. M., the title and name which your respondent, the National Council, has always bestowed upon an association of the subordinate Councils in this State. In accordance with said petition your respondent, the National Council, created a State Council under such name and title on the
2nd day of March, 1901, and gave it all the rights, powers,
147 and privileges that had been previously granted to the old State Council. In said State Council so created the following, who are made defendants to the bill of complaint in this cause, are the officers: E. L. S. Bouton, State Councilor; James R. Mansfield, State Vice-Councilor; Dr. E. H. Heaton, Junior Past Councilor; George B. Sprow, Jr., State Councilor Secretary; John E. Boehm, State Council Treasurer; E. R. Boyer, State Council Conductor; C. P. Blunt, State Council Warden; W. J. Gibson, State Council Inside Sentinel, and O. B. Hopkins, J. R. Jewell are members. B. B. Bott, Jas. S. Groves and J. R. N. Curtin are members.

Your respondents claim that by obtaining said charter from the General Assembly, the complainants did not represent all of the members of the State Council of Virginia, Jr. O. U. A. M. As above stated, a large minority of the same refused to sympathize with or to take any part in any acts of insubordination above mentioned, but have always insisted that the State Council should always remain subordinate to and in obedience to the National Council. Your respondent is advised, believes and insists, that the complainant has no right to use the name under which it was chartered, and that the use of said name by said complainant is in violation of the rights of the State Council created, as above stated, on the second day of March, 1901, of which all the defendants to the bill of complaint, except the National Council, are officers and members. By the granting and acceptance of said charter your respondent insists that the State Council so created became entitled to the rights and privileges, books, papers, money, and other property of the Order in Virginia, which were held by the old State Council in trust for the exercise and promulgation of the objects of the Order. Your respondent is advised, believes and insists, that while the General Assembly of Virginia has the right to create a charitable or beneficial organization, that it has no right to grant any charter that will interfere with the property, rights and privileges heretofore belonging to others. Your respondent insists that it had no right to authorize the use of a name which had belonged to and had been used, and did then belong to and

would continue to be used by the subordinate Councils in Virginia when created by your respondent into a State Council in accordance with the powers and usages of the National Council, and your respondent insists that the said complainant by its use of the name under which it was chartered, and by the exercise of the powers which are claimed under said charter, is doing a wrong and an injury to your respondent, the National Council, and to the State Council created as heretofore stated by the warrant granted on the 2nd
148 day of March, 1901, and represented by all the said respondents except the National Council. Your respondent denies that the State Council, represented by the individual defendants, is attempting to collect or is collecting money to which the complainant is entitled, or which would otherwise be paid to the complainant, and that the State Council, represented by the respondents, as above stated, is using the name for any such purpose. On the other hand your respondent insists that the complainant, by using the name, which it has wrongfully usurped as above set forth, is attempting to collect and is collecting money to which the State Council, represented by your respondents, as above stated, is entitled and would be paid to said State Council except for the insubordination and wrongful acts of the complainant as above set forth.

Your respondent alleges that they have not in the premises been guilty of any wrong doing, or improper or illegal combination, and deny each and every allegation in said bill of complaint charging or intimating the same, and call for strict proof of the same.

Your respondent is advised, believes and charges that the wrongful acts of the complainant as above set forth is injurious to your respondents and to the State Council, represented by your respondents, as above stated, and in violation of their rights in the premises. They are advised that they are entitled to relief by a court of equity from the wrongful acts and doings of the complainant as above set forth, and that they are entitled to have the complainants enjoined from using the name under which they were chartered by the General Assembly of Virginia as aforesaid; from using the ritual of the National Council, which they are now using; from withholding from the State Council instituted as heretofore stated on the second day of March, 1901, all of the moneys, books, and property which belonged to the old State Council; from claiming and holding out to the world that it is the true State Council of Virginia Jr. O. U. A. M.; from soliciting any person to become a member of any of the pretended Councils of their pretended organization, or collecting any money or dues under any claim or pretense that they are the true State Council of Virginia Jr. O. U. A. M. Being so advised, your respondents pray that this honorable court will grant them an injunction against the complainant, enjoining and restraining it from using the name under which they were chartered by the General Assembly of Virginia, as aforesaid; from using the ritual of the National Council which they are now using; from withholding from the State Council, instituted, as heretofore stated, on the second day of March, 1901, all of the moneys, books and other property which

belonged to the old State Council; from claiming and hold-
149 ing out to the world that it is the true State Council of Virginia Jr. O. U. A. M.; from soliciting any person to become a member of any of the pretended Councils of their pretended organization, or collecting any money or dues under any claim or pretense that they are the true State Council of Virginia Jr. O. U. A. M. And your respondents, in order that complete justice and relief may be granted them, pray that this, their answer, may be treated as a cross bill, and that such relief may be granted the respondents by way of injunction, as above prayed for, or in any other manner or to any other extent which may, to the Court, seem meet and proper.

And your respondents will ever pray, etc.

THE NATIONAL COUNCIL, JUNIOR ORDER UNITED AMERICAN MECHANICS OF THE UNITED STATES OF NORTH AMERICA, [SEAL.]
By AMOS L. CRAY, *National Councilor.*

Attest: EDW. S. DEEMER,
National Secretary.

STATE OF INDIANA, *City of Jonesboro, To wit:*

This day personally appeared before me, E. E. Friedline, a notary public in and for the city and State aforesaid, Amos L. Cray, who, being first duly sworn, deposeth that he is the National Councilor of the National Council, Jr. O. U. A. M. of the U. S. of North America, the answer of which corporation is above written, and made oath that the statements contained in said answer, so far as made of his own knowledge, are true, and so far as made from the knowledge or information derived from others, he believes to be true; and that he has directed the National Secretary to affix the seal of the said National Council to said answer.

Given under my hand and seal this 10th day of February, 1902.

(Signed) E. E. FRIEDLINE, [SEAL.]
Notary Public.

My commission expires Feb. 24, 1904.

STATE OF PENNSYLVANIA, *County of Philadelphia, ss:*

This day personally appeared before me, Alex. M. De
150 Haven, a notary public in and for the State and County aforesaid, Edward S. Deemer, who, being first duly sworn, deposeth that he is the National Secretary of the National Council, Jr. O. U. A. M. of the U. S. of North America, and the lawful custodian of the seal of the said National Council; that he has affixed hereto the said seal of the said National Council, the answer of which National Council is above written, and made oath that the statements contained in said answer, so far as made of his own knowledge, are true; and so far as made from the knowledge or information derived from others, he believes to be true.

Given under my hand and seal, this 13th day of February, 1902.
(Signed) ALEX. M. DE HAVEN, [SEAL]
Notary Public.

Commission expires June 2nd, 1905.

By counsel:

JOHN C. WECKERT, *p. d.*
MEREDITH & COCKE, *p. d.*

Answer of E. L. S. Bouton.

(Filed in Court under Decree of April 8th, 1902.)

In the Chancery Court of the City of Richmond. In Chancery.

THE STATE COUNCIL OF VIRGINIA, JR. O. U. A. M., OF THE STATE OF VIRGINIA, a Corporation, Complainant,
vs.
THE NATIONAL COUNCIL OF THE JR. O. U. A. M., OF THE U. S. OF NORTH AMERICA, a Corporation; E. L. S. BOUTON, JAMES R. MANSFIELD, E. H. HEATON, GEORGE B. SPROW, JR., J. E. BOEHM, O. B. HOPKINS, JAMES S. GROVES, E. R. BOYER, C. P. BLUNT, W. J. GIBSON, J. R. JEWELL, B. B. BOTT, J. R. N. CURTIN, ET ALS., Respondents.

The Answer of E. L. S. Bouton to the Bill of Complaint Exhibited against him and Others in the Above Styled Cause.

This respondent alleges that he has read, in full, the answer
151 filed in this cause by the National Council, Jr. O. U. A. M., and the prayer for cross bill thereto attached; that so far as the facts therein contained are in his own knowledge they are true and so far as made on the information of others he believes to be true; that he hereby adopts the said answer in full as his answer, as if the same had been herein rewritten out in full; that he also adopts the prayer contained in said answer that it may be treated as a cross bill and the prayer for relief therein contained and here makes the same prayers as if it were rewritten out in full.

And this respondent will ever pray, etc.
(Signed) E. L. S. BOUTON.

VIRGINIA, *Fairfax County, To wit:*

This day personally appeared before me, A. J. Ginnelley, a notary public in and for the State and County aforesaid, E. L. S. Bouton and made oath that the statements contained in said answer, so far as made of his own knowledge, are true, and so far as made from knowledge or information derived from others, he believes to be true.

Given under my hand and seal, this 3d day of February, 1902.
[SEAL] (Signed) A. J. GINNELLEY,
Notary Public.

(MEMORANDUM.—It is agreed that the answers of the other individual defendants need not be copied, as each is in exact form with the said answer of E. L. S. Bouton.)

EXHIBIT "C."—VIRGINIA COURIER.

(Filed with Answer.)

JUNIOR ORDER UNITED AMERICAN MECHANICS.

Instituted May 17th, 1853.

DECLARATION OF PRINCIPLES.

(MEMORANDUM.—It is agreed that the Declaration of Principles here set out are identical with that adopted at the Minneapolis session, with the exception of the word "unutterably" instead of "unalterably.")

152 *Objects of the Order.*

1. To maintain and promote the interests of Americans and shield them from the depressing effects of unrestricted immigration, to assist them in obtaining employment and to encourage them in business.
2. To establish an Insurance Branch and a Sick and Funeral Fund.
3. To uphold the American public school system, to prevent interference therewith and to encourage the reading of the Holy Bible in the schools thereof.
4. To promote and maintain a National Orphans' Home.

(Presented at Philadelphia Session, June, 1900.)

EXHIBIT "F."

(Filed with Answer.)

To the Officers and Members of the National Council, Jr. O. U. A. M., U. S. A.:

DEAR SIRS AND BROTHERS: At a meeting of the Executive Committees of the States of New York, New Jersey, Pennsylvania, Virginia and the District of Columbia, held in the city of Philadelphia, the following preamble and resolutions were adopted:

Whereas, Owing to divers grievances held by the State Councils of New York, New Jersey, Pennsylvania, Virginia and District of Columbia against the National Council, the said States have withheld the per capita tax usually paid by them to the said National Council, and

Whereas, These States are willing to resume relations with the National Council, upon proper adjustment of these grievances, therefore, be it

Resolved, By the undersigned committees from the aforesaid

States, that we do hereby respectfully petition the National
153 Council to redress the grievances held by the said States against the said National Council.

First. By abolishing all laws adopted at a session of the National Council held at Minneapolis, Minn., in June, 1899, and all other acts growing out of the adoption of said laws.

Second. By amending the laws which were in force prior to June, 1899, so as to give the five States, and all other States just representation, according to membership and taxation.

Third. By discontinuing the appropriations to the so-called periodicals of the Order.

Fourth. By amending the laws so as to abolish the position of National Organizer; to discontinue the positions of Special Organizers, except in case of absolute necessity, and then only those known to possess unquestioned ability and experience.

Fifth. By discontinuing a Secretary of the National Legislative Committee with a salary attached, and place the duty of said Secretary upon the National Secretary, without additional pay.

Sixth. To appoint none but duly accredited National Representatives upon any and all committees of the National Council.

Seventh. To reduce the per capita tax commensurate with an intelligent and economical administration of the affairs of the Order.

Eighth. That the National Council shall be purely, a representative body and of absolute limited powers.

Yours fraternally,

(MEMORANDUM.—It is agreed that among other signatures from the States appear E. T. Keeton and W. D. Hill, Executive Committee of Virginia.)

EXHIBIT "G."

(Filed with Answer.)

* * * * * * *

154 In view of the foregoing it is by the National Judiciary ordered:

First. That the charter of the old State Council of the State of Virginia is hereby suspended.

Second. That the State Council Secretary, the State Councilor, the State Council Executive Board, the State Council Finance Committee, the State Council Treasurer, and all and every of them, of the State Council of the State of Virginia, the functions of whose office may require participation in the matter of the payment by the said Council of the per capita tax due the National Council to the National Secretary, on or before the tenth day of January, 1901, execute the proper warrant for and pay over to the National Council through its Secretary, the amount of the total per capita tax, due the said National Council on the said tenth day of January, 1901, and then unpaid. It being understood that in the payment of the said per capita tax by the said State Council Secretary, the National Sec-

retary shall accept and give credit for any receipt executed by him in acknowledgment of sums of money received by him from Councils of the State of Virginia on account of per capita tax, during the period that has elapsed since the last payment to the National Council by the State Council of Virginia of the per capita tax due from the said State Council of Virginia to the National Council.

Third. That the State Council of Virginia shall on or before the tenth day of January, 1901, in special session assembled, rescind all and every such action heretofore taken by it, as seeks to erect the State Council of Virginia into a body independent of any superior to the National Council of the Order, the body which created it, and beyond the above indicated business and provisions for meeting the tax due the said National Council, said special session shall transact no other business.

Fourth. That if upon the tenth day of January, 1901, the said State Council of Virginia has paid the tax due as provided in the second subdivision above, and taken such action and furnished to the National Council Secretary proper proof of the same, as provided in the third sub-division above, then the order of suspension herein decreed shall be dissolved and the State Council of Virginia restored to all of the rights, privileges and prerogatives of a State Council of the Order, and failing to meet the before mentioned second and third requirements on or before the tenth day of January, 1901,
155 then and in that event the charter of the said State Council of the State of Virginia shall be and it will thereby be revoked.

Fifth. And it is further ordered that the officers of the said State Council of Virginia are forbidden to exercise, or to attempt to exercise, any of the prerogatives of their office or to expend or dispose of any of the funds or property belonging to the said State Council or to in any manner interfere with the affairs of the Councils of the Order in the State of Virginia, during the period of suspension of the said charter hereinbefore ordered, except in so far as may be necessary to the calling and holding of a special session of the State Council for the purpose of carrying into effect the mandates of this decree.

Dated Philadelphia, Pa., December 7, 1900.

Attest:

[SEAL.] GEO. F. LOUNSBURY, *Recorder.*

EXHIBIT "H."

(Filed with Answer.)

The State Council Secretary read the following:

CAPE CHARLES, VA., *October* 17, 1899.

To the Officers and Members of the State Council of Virginia, Jr. O. U. A. M.:

DEAR SIRS AND BROTHERS: Whereas the State Council of Virginia has always cheerfully contributed its share of the tax levied by the

National Council, notwithstanding that absolutely nothing is received in return therefor; and

Whereas (following the language of the Declaration of Independence) to secure certain rights governments are instituted among men, deriving their just powers from the consent of the governed; that whenever any form of government becomes destructive of the ends sought, it is the right of the people to alter or to abolish it, and to institute a new government, laying its foundation on such principles, and organizing its powers in such form as to them
156 shall seem most likely to effect their safety and happiness.

Prudence, indeed, will dictate that governments long established should not be changed for light and transient causes; and accordingly all experience hath shown that mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed. But when a long train of abuses and usurpations, pursuing invariably the same object, evinces a design to reduce us under absolute despotism, it is our right, it is our duty, to throw off such government and to provide new guards for our future security. Such has been the patient suffering of this State Council, and such is now the necessity which constrains us to alter our former system of government. The history of the National Council for the past two years is a history of repeated abuses and usurpations, all having in direct object the establishment of an absolute tyranny over certain States.

To prove this, let facts be submitted to a candid world:

The increase of the per capita tax each year, and the results therefrom, as follows:

1895–'96—Tyler's administration, tax 8 cents. Increase in members, 13,140, and in Councils, 142.

1896–'97—Shanor's administration, tax 12 cents. Increase in memebrs, 10,889, and in Councils 106.

1897–'98—Powell's administration, tax 17 cents. Increase in members, 2,268, and in Councils 34.

1898–'99—Pierson's administration, tax 25 cents. Increase in members, 2,677, and loss in Councils 125.

The unequal and unjust basis of representation in the National Council, whereby a State with 97 members has as many Representatives as a State with 5,000 members. In other words, 22,364 members, paying a tax of $5,591, are entitled to 84 National Representatives, while 160,623 members paying a tax of $40,006.75, are only entitled to 38 Representatives.

The law by which all National Representatives (including Past National Representatives and Past State Councilors holding office) are to be paid 2½ cents per mile each way and $3 per diem for the session, and for one day prior thereto, out of the National Treasury, thus involving a large additional expense, which will require an additional tax of at least 8 cents per capita, and a State with 97 members will only have to pay 8–97, or $7.76, while this State will pay $720, or an increase of about $500 per year over the old law, when each State paid its own Representatives' expenses.

The employment of special organizers at an enormous cost each year, with practically no results therefrom.

157 The continuance of a National Legislative Committee at an annual salary to the Secretary of $1,200 and expenses for himself and other members of the committee, aggregating about $2,400 yearly—with nothing accomplished.

The election and appointment as officers and committeemen of Past National Representatives and Past State Councilors at an annual cost of $6,000 to $8,000, whereas if the duly accredited National Representatives were permitted to hold these positions, this sum would be saved to the National Council, thereby reducing the expenses of this State Council.

The creating of unnecessary offices and committees—filled by Past National Representatives and Past State Councilors—which can be dispensed with without any hurtful effect whatsoever.

The unlimited power vested in the National Councilor, giving him the absolute right to change the time and place of holding the meeting of the National Council.

The changing of the objects of the Order contrary to law, and the establishment of a Beneficiary Degree, and the loaning to same the sum of $5,000 without any security whatsoever.

The establishment of a National Judiciary of three men, whose decisions, no matter how unjust, are final—no appeal, not even to the National Council.

The refusal to recognize a legal call for the yeas and nays.

The un-American law which forces every Council, under penalty of forfeiture of charter, to purchase its supplies from the National Secretary, at an advance of 20 per cent., plus cost of shipment.

The abolishment of all our laws and valuable decisions, the accumulation of nearly a half century.

Therefore, in view of the foregoing indisputable facts, be it

Resolved, by the State Council of Virginia, Jr. O. U. A. M., in annual session assembled, That we refuse to pay any further tax to the National Council, and that we refuse to recognize or accept the new laws illegally adopted, until the National Council shall legally adjust these matters and give us representation based upon taxation and membership.

Respectfully submitted in V., L. and P.

* * * * * * *

(MEMORANDUM.—It is agreed that the foregoing was signed by thirty-four persons, being officers and members of different Councils. The resolution having been discussed, was finally adopted by a vote of 79 ayes to 29 nays, in the following form:)

158 Resolved, by the State Council of Virginia, Jr. O. U. A. M., in annual session assembled, That we withhold further tax to the National Council until the National Council shall legally adjust these grievances, and give us representation based upon membership and taxation.

(MEMORANDUM.—At Cape Charles no action was taken looking to obtaining a Charter, as shown by Exhibit "H," filed with answer That the Charter was asked for as appears from the following extract from Exhibit "I," filed with answer.)

EXHIBIT "I."

The Executive Board, through their Chairman, submitted the following report:

RICHMOND, VA., *March* 14, 1900.

To the Officers and Members of the State Council of Virginia Jr. O. U. A. M., Greeting:

DEAR SIRS AND BROTHERS: Only about five months have passed since we met upon the shores of Eastern Virginia, there to transact our annual business. Little did we think that we would assemble within the walls of the Capital of this Commonwealth so soon, but brethren these are surprising and peculiar times. We have met to-day not to review the work of the year, but to deal with matters which are of vital importance to our Order.

Complying with the law defining the duties of State Councilor with respect to the peace and harmony of the Order, I quote as follows:

"He shall take such steps to promote the peace and harmony of the Order in his jurisdiction as cases of emergency may require."

Acting upon this law, and believing it to be necessary, I, unwilling to act alone in the matter of so much import, called a meeting of the Executive Board of the State Council of Virginia to meet in the City of Richmond on the evening of November 24th, 1899. The object of this call being to take such steps as in the opinion of the Board were necessary for the peace, harmony and protection of the Order in this jurisdiction. Knowing that we stood in the same relation to the National Council as do the States of Pennsyl-
159 vania, New Jersey, New York and District of Columbia, each having withheld their per capita tax from the said National Council, which act has been construed as an act of insubordination by that body, the penalty by precedent being the suspension of the Charter granted by said National Council, pending charges before the National Judiciary to show cause why said Charter should not be revoked.

Many of the other States having Charters granted by the Legislature of their respective States, even antedating that of the National Council. Being in possession of these facts, and feeling the absolute importance of protection, as well as standing in the State, we, the Executive Board of the State Council of Virginia, decided to make application to the Legislature of Virginia for a Charter for this State Council. Whereupon the State Council Secretary, then a member of the Legislature, was instructed to present the bill, which he did, and which passed the lower House on the 29th day of January, 1900. This bill to incorporate met with some opposition on the part of some members of this State Council, and was consequently delayed until the 15th day of February, at which time it was confirmed by the Senate and was at once sent to the governor for his signature, was by him signed, thus becoming a law.

We did this believing it to be to the best interest of the Order in Virginia, and not with a desire to sever our connection with the said

National Council. Trusting that our action may meet with your approval and ratification,

Respectfully submitted in V., L. and P.,

FLOYD A. HUDGINS,
State Councilor and Chairman Executive Committee.

Past State Councilor Rawson moved to adopt, but withdrew his motion in order that the following might be presented:

RICHMOND, VA., *March* 14, 1900.

Whereas, The Executive Board of the State Council of Virginia, Jr. O. U. A. M., deemed it wise and expedient to apply to the Gen-ral Assembly of Virginia for a Charter for the State Council of Virginia, Jr. O. U. A. M., and

Whereas, the followong bill, to-wit:

* * * * * * *

160 (MEMORANDUM.—It is agreed that the Act of the General Assembly chartering the complainant, was here set forth.)

Be it resolved by the Sta-e Council of Virginia, Jr. O. U. A. M., in special session assembled in the City of Richmond, this fourteenth day of March, A. D., 1900, said special session having been duly called in accordance with the laws of the Order, that we do hereby approve of said action of the Executive Board; that we do hereby accept the foregoing Charter for the said State Council of Virginia, Jr. O. U. A. M. of Virginia.

L. R. SMITH, *Rep. No.* 7.
B. G. GARDNER, *Rep. No.* 7.
A. L. BRADLEY, *Nat. Rep.*

The resolution was debated at length, and the vote was taken by yeas and nays, resulting:

Yeas, 86; nays, 17; and the resolution was agreed to, ratifying the Charter.

EXHIBIT "J."

(Filed with Answer.)

(MEMORANDUM.—It is agreed that at the meeting of the complainant State Council at Roanoke, Virginia, October 15, 1900, a special Law Committee reported a Declaration of Principles, a Constitution, By-laws, &c. That the Declaration of Principles is exactly the same as that adopted at the session of the National Council at Asheville and reaffirmed at Minneapolis, except in the change of three immaterial words, and the omission of the sentence, "In the strictest sense we are a national political organization, but we oppose with unanimity the slightest taint of partisanship." The Committee offered as the first section of article I of the proposed Constitution the following:)

CONSTITUTION.

ARTICLE I.

NAME AND POWERS.

SECTION 1. This body shall be known as the "State Council
161 of Virginia, Junior — of United American Mechanics, of the State of Virginia." It shall be the supreme head of the Order, with power to make its own Constitution and laws, Rules of Order, general laws, and subordinate Council Constitution, for the observance and government of the Order.

(MEMORANDUM.—It is agreed that when that section was offered the following substitute was offered:)

SECTION 1. This body shall be known as the State Council of Virginia, Junior Order of United American Mechanics of the State of Virginia. That notwithstanding the State Council of Virginia has had its Charter incorporated by the General Assembly of the State, that it is yet a member of the National Council, Jr. O. U. A. M., and its deliberations here in convention will be conducted pursuant to the laws of the National Council.

(MEMORANDUM.—It is agreed that the substitute was rejected by a vote of ayes 32, and nays 87, and the section was adopted by a vote of ayes 89, nays 32.)

EXHIBIT "K."

(Filed with Answer.)

(Copy of State Council Charter.)

VIRTUE, LIBERTY AND PATRIOTISM.

1830 1890

JUNIOR ORDER

OF

UNITED AMERICAN MECHANICS.

To all whom it may concern:

The National Council of U. S. of A., do hereby grant this charter to —— —— and their successors duly and legally elected to constitute a State Council of the State of —— and being formed are hereby authorized to grant Charters to Subordinate Councils of the Junior O. U. A. M. in said State according to the rules and charges adopted
by National Council and to enact by-laws for the government
162 of their Council and a Constitution for the government of the subordinate Councils under their jurisdiction. Provided always that the said Council do act according to the Order and in conjunction with, and obedience to the National Council, and

further in consideration of the faithful performance of their part, the National Council will support the State Council of —— in the exercise of their duties and in the honors and privileges of the Order.

——— ———, *N. C.*
——— ———, *N. Sec'y.*

Philadelphia, ...

STATE OF PENNSYLVANIA, *County of Philadelphia:*

Edward S. Deemer, being duly sworn, says that the above and foregoing is a true and accurate copy of the usual form of all charters emanating from the National Council to a State Council under the jurisdiction of the National Council, and that the said form has been used ever since the formation of the National Council of the J. O. U. A. M., and that he is Secretary of the National Council aforesaid, and that the said forms are now in his possession as Secretary aforesaid, and are the only ones used as demands arise for issuance to State Councils.

EDW. S. DEEMER.

Sworn and subscribed before me this 8th day of January, A. D. 1901.

[SEAL.] ALEX. M. DE HAVEN,
Notary Public.

CHAPTER 137.

An Act to Incorporate the Trustees of Lovettsville Council, No. 101, Jr. O. U. A. M., of Lovettsville, Virginia.

Approved January 27, 1898.

1. Be it enacted by the General Assembly of Virginia, That L. A. Cooper, J. M. Dinges, N. M. Stone, and their successors be, and they are hereby, appointed a body politic and corporate by the name and style of the trustees of Lovettsville Council, numbered one hundred and one, Junior Order of United American Mechanics, of 163 Lovettsville, Loudoun County, Virginia, and by that name shall have perpetual succession, may contract and be contracted with, sue and be sued, may acquire, receive, hold, possess, and enjoy, and may rent, sell, convey, and otherwise manage or dispose of all lands, money, or other property, real or personal, which may hereafter be given or otherwise acquired by them for the *the* use of the said Council of Junior Order of United American Mechanics, and the said trustees shall hold their office only so long as they remain members of said Council; provided, that the amount of land held by them shall not exceed two acres; and provided, that the sum of money acquired by them shall not exceed three thousand dollars.

2. The said Council, at any meeting called by the Councilor for this purpose, shall have power to fill all vacancies in the Board of

Trustees, the persons to fill such vacancies to be chosen from the membership of said Council.

3. Whenever the said Council shall surrender its charter to the State Council of Virginia, or from any other cause cease to exist, the said trustees, or a majority of them, shall have authority to sell and convey the land and other property held by them for the use of said Council, and distribute the money belonging to said Council ratably among the members in good standing at the time of such surrender of charter, subject to the action of the State Council.

4. Two trustees shall constitute a quorum for the transaction of any business under this act.

5. This act shall be in force from its passage.

CHAPTER 688.

An Act to Define and Regulate Fraternal Beneficiary Associations, Orders or Societies.

Approved March 3, 1898.

* * * * * * *

2. Any fraternal beneficiary order, association or society of this, or any other State, district, province or territory, now having members, or any lodge, chapter, council or subordinate branch duly established and organized in this State, may continue its operations and business in this State; provided, that it hereafter complies with the provisions of this act regulating annual reports, and the designation of the Auditor of Public Accounts as the person upon whom process may be served, as hereinafter provided.

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* * * * * * *

4. Every such corporation, society, order or association doing business in this State, shall, on or before the first day of March of each year, make and file with the Auditor of Public Accounts a report of its affairs and operations during the year ending the thirty-first day of December immediately preceding, which annual report shall be in lieu of all other reports required by any other law. Such reports shall be made under oath by the duly authorized officers of any such order, and shall be published, or the substance thereof, in the annual report of the Auditor of Public Accounts, and shall contain answers to the following questions:

(Here follows a list of questions to be answered.)

* * * * * * *

5. Each such corporation, society or association now doing, or hereafter admitted to do business within this State, and not having its principal office within this State, and not being organized under the laws of this State, shall appoint in writing the Auditor of Public Accounts or his successors in office, to be its true and lawful attorney, upon whom all lawful process in any action or proceeding against it may be served, and in such writing shall agree that any lawful

process against it, which is served on said attorney, shall be of the same legal force and validity as if served upon the order or association, and that the authority shall continue in force so long as any liability remains outstanding in this State, and such service in this State shall alone be a legal service. * * *

* * * * * * *

7. Any such order, association, or society refusing or neglecting to make the report to the Auditor of Public Accounts, as provided in this act, shall be excluded from doing business within this State.

* * * * * * *

9. All laws or parts of laws in conflict with or inconsistent with this act be, and the same are hereby, repealed, and nothing in
165 this act shall be held to affect or to apply to grand or subordinate lodges of Masons, Knights of Pythias, Old Fellows, Red Men, Junior Order American Mechanics, or similar orders that do not have as their principal object the issuance of benefit certificates to members.

(MEMORANDUM.—It is agreed as set forth in statement of facts that neither the defendants nor the old State Council ever performed any of the requirements of said act.)

Agreed Facts.

(Filed in Court under Decree of July 21st, 1904.)

THE STATE COUNCIL OF VIRGINIA, J. O. U. A. M.
vs.
THE NATIONAL COUNCIL, J. O. U. A. M., ET ALS.

It is agreed by counsel for the plaintiff and defendants in the above entitled cause as follows:

1. The exhibits filed with the bill and answer are what they purport to be, and they, or such portions of them as counsel may deem proper, may be read in evidence, subject to objections by either side for irrelevancy, and this agreement applies also to the pamphlet, "Official Proceedings of the Order from 1869 to 1885," marked "Z," and "Official Proceedings at the Louisville Session," marked "X."

2. The general laws and Constitution of said National Council, as set forth on page 3–63 of Exhibit "C," with bill (except the change as to Orphan's Home, adopted in 1897), were in force at the time of the session at Minneapolis in June, 1899, and continued in force except so far as they were validly altered at the session, and subsequently recognized at each annual session thereafter—the plaintiff denying that the alterations were or are valid, and the defendants claiming that they were and are valid.

3. At the session of the National Council at Denver, Colorado, in 1896, the following amendment was offered and laid over: "Amend Art. 11, National Council Constitution, by adding a sixth object, to establish or erect an Orphan's Home, as a home for the orphans of

deceased members of the Order, and to maintain the same." (Proceedings 1896, p. 271.) Exhibit "W."

166 At the next session of the National Council, held at Pittsburg, June 15–18, 1897, the following action was taken on the said proposed amendment: "Amendment to Art. 11, National Council Constitution. P. S. C. Buser, of Pennsylvania, moved to adopt." P. S. C. Carson, of New Jersey, moved to add to the fourth object the words "Orphan's Fund."

P. S. C. Carson, of New Jersey, withdrew his motion, and the motion of P. S. C. Buser, of Pennsylvania, was agreed to. P. S. C. Buser, of Pennsylvania, moved that the last night meeting in September be set apart for the subordinate Councils of the Order to take a vote thereon, which was agreed to. P. S. C. Carson, of New Jersey, moved to add to Law XXXI., section 2, "Orphan's Home." The National Council decided that if the new object was approved by the subordinate Councils, it would be the duty of the Law Committee to make such changes in the other laws as would make them conform to the new condition of things (proceedings 1897, p. 183). At the next session of the National Council, in Louisville, Kentucky, June 21–24, 1898, the National Council received the votes of the members of the Order, and a majority vote having approved the new or sixth object, it became effective (proceedings 1898, pp. 94–111). Subsequently the charter was amended, as stated in division 7 of this agreement as to facts. The foregoing paragraph states the facts correctly, but the evidence is objected to by defendants as immaterial and irrelevant.

That at the Louisville Convention, 1898, during the consideration of certain specific amendments reported by the Law Committee, "P. S. C. Collins, of Pennsylvania, moved to refer the General Laws, Constitution of the National Council and of subordinate Councils under the jurisdiction of the National Council to the incoming Law Committee for general revision, which was agreed to. (P. 113.)

And that subsequently, while said specific amendments were still under consideration, P. S. C. Arthur moved "That in consideration of the National Council having referred the laws to the incoming Law Committee for general revision, that all further amendments be laid over." Agreed to (p. 114).

4. At the session of the National Council at New Brunswick, New Jersey, June 17–19, 1879, the report of the National Secretary Deemer contained the following (proceedings 1869 to 1885, p. 212): "I suggest to this body the expediency of the appointment of a special committee to consider the subject of substituting life insurance or endowment, in lieu of the funeral benefit feature of our organization."

167 In 1880 (p. 251–256) the committee to whom said report was submitted recommended that the subject be referred to a special committee of three to report at the next session, which was agreed to.

At the next session of the National Council, at Haverhill, Mass., June 22nd, 1881, the vote of the members on the proposed insurance plan was received and counted, and the legality of certain votes cast

was questioned. The committee that counted the votes recommended that a new vote be taken, which recommendation was adopted. (P. 301–2.)

At the next session of the National Council, at New York, June 22, 1882, the votes of the members cast on said proposed insurance plan was received and counted and the same failed to become effective because it was not approved by a majority vote. (P. 333–4.)

Statement in this paragraph states the facts correctly, but the evidence is objected to by the defendants as immaterial and irrelevant.

5. Alterations in the law in reference to the regalia in five sections were submitted to the members of the Order for a vote, and the National Council, at its next session, in Boston, June 18th 1875, received and counted said votes, and a majority being in favor of four of said sections they became effective, but the said other section failing to receive a majority vote in favor of it, failed to become effective. (Proceedings 1869 to 1888, p. 114–115.)

At the session of the National Council at Georgetown, D. C., June 17th, 1884, the following was read: "Add a new section to Law XXI., General Laws, to be known as section 2. Members of the National and several State Councils shall not be compelled to wear the foregoing prescribed regalia, provided they shall wear instead thereof the emblems prescribed by Law 12, General Laws."

Representative Armstrong, of Pennsylvania moved to adopt, which was agreed to. P. N. C. Culver moved that the amendment be submitted to a vote of the Order at the same time as the amendment to the fifth object, which was agreed to (p. 378).

At the session of the National Council, held at Harrisburg, Pa., June 16th, 1885, the vote of the members of the Order on the proposed alteration in the law in reference to regalia was received and counted, and a majority of the vote having been given in favor of said alteration, it thereby became effective (p. 413). Statements in this paragraph states the facts correctly, but the evidence is objected to by the defendants as immaterial and irrelevant.

6. None of the changes in the Constitution, General Laws,
168 or objects of the Order adopted by the National Council at the Minneapolis session of 1899, have been submitted to the members of the Order for a vote through the subordinate Councils. The above is admitted as true, but subject to the objection of the defendant as immaterial and irrelevant.

7. On April 10th, 1893, by a decree of the Court of Common Pleas No. 3, Philadelphia County, Pa., the National Council became a body corporate, as shown by Exhibit "A," filed with the answer.

On April 2nd, 1898, by authority of said court, said corporation charter was amended by adding the following as a sixth object:

"Sixth. To establish or erect an Orphan's Home for the orphans of deceased members of the Order, and to maintain the same."

Neither the insurance branch, nor any of the other alterations claimed to have been adopted by the Minneapolis session of the National Council in 1899 has been authorized by the court as an amendment to the corporate charter of the National Council.

8. At the session of the National Council at Atlantic City, New

Jersey, in 1892 (p. 402), Deputy National Councilor F. J. Shaler, of Illinois, recommended that the National Council should become incorporated, and that all State Councils should do likewise, which was approved by the National Council. Statement correctly states the fact, but it is objected to by counsel for the defendant as irrelevant and immaterial.

9. It is agreed that both the plaintiff and defendant State Councils have granted and intend to grant charters to subordinate Councils in the State of Virginia, and the City of Richmond; that each by their organization and existence, are obtaining members and membership fees and dues, which one would obtain and receive but for the existence of the other and that both the complainant State Council and the defendant State Council are respectively claiming to the outside world that it is the only true and lawful State Council of Virginia Jr. O. U. A. M.

10. It is agreed that the principal officers of complainant bear the appellations of State Councillor, Vice-State Councillor, State Treasurer, and Junior State Councillor, and that the defendant State Council have elected officers with the same appellations and duties, whose names are correctly stated in the bill. The appellations are the same that have always been used by the State Council of Virginia under the charter granted by the National Council. The
169 complainant have continued to use and are now using the ritual formerly used by the old State Council with such changes as have been caused by the existing condition of affairs, arising from the disassociation with the National Council.

11. It is admitted that if plaintiff is entitled to the rights asserted in the bill the acts of the defendant interfere with and impair those rights, and it is also admitted that if defendants are entitled to the rights asserted in the answer, the acts of the plaintiff interfere with and impair those rights.

12. All members of the Order enter through the subordinate Councils. They support the entire Order, including State Councils and the National Councils. They are the only bodies of the Order that pay either sick or death benefits or bury deceased members.

13. In 1869 there existed three State Councils of Pennsylvania, Delaware and New Jersey. These three State Councils in that year created a National Council, and agreed as to what should then be the powers of the said National Council which was formed in accordance with said agreement. Thereupon the said mentioned three State Councils surrendered and abandoned their independent existence and powers and took charters for themselves respectively from the said National Council, and recognized that they existed and exercised all their subsequent powers under said National Council. At that time there was no State Council, nor were there any subordinate Councils in Virginia. At the Minneapolis session it was ordered for the first time by the Constitution there adopted that at the opening of each session of a State Council its charter should be displayed. After the above mentioned date, and prior to 1893, charters were granted to subordinate Councils in many other States in the United States, among which was the State Coun-

cil of Virginia. The State Council of Virginia obtained its charter, and has derived all the powers which it has claimed and exercised, until the present controversy, under and by reason of the State Council charter so obtained.

In 1892 the National Council determined that it should become a body incorporated by law, and in 1893 it was so incorporated under the laws of Pennsylvania, a copy of which charter is with the answer, marked Exhibit "A." Since such incorporation the National body has existed solely as an incorporated body under its charter. Under the Constitution and Laws of Pennsylvania no charter can be obtained from the Legislature, but must be obtained from a court under General Laws, applicable to the various kinds of corporations.

170 14. The then State Council of Virginia having lost or mislaid the old State Council charter, applied on the 18th day of September, 1899, to the National Council for a new charter, in order that it might display the same as required by the Constitution adopted at Minneapolis. It received such copy from the National Council Secretary, and displayed, as required by the Minneapolis Constitution, the said charter at its next meeting, which was held at Cape Charles, Virginia, October 17th and 18th, 1899, a copy of the proceedings of which session so held is filed with the answer as Exhibit "H." Since said meeting a majority of the said State Council has refused to recognize as binding upon it the Constitution and General Laws adopted at Minneapolis, or to obey the rules and requirements of the National Council, issued in pursuance thereof.

15.. T. B. Ivey is the sole editor and proprietor of the Virginia Courier, a paper published in the City of Petersburg, Virginia, and he is also Secretary of the complainant State Council of Virginia Junior Order United American Mechanics of the State of Virginia on the 17th day of February, 1900. The Virginia Courier aforesaid is the official organ of the said State Council in that it publishes the name, number and location of the subordinate Councils in the State, their place and time of meeting, and the names of their Secretaries and post-office addresses, and each Recording Secretary is furnished two copies of each issue. For this space and this service the State Council pays, and has no further control over any of its columns. It has never undertaken to direct the policy or to control any of the publications of said paper. The said State Council has never authorized, by vote or resolution, the publication in said paper of the objects of the Order J. O. U. A. M., as adopted at the Minneapolis session of the National Council, in 1899, or any other session. Said objects were published by said T. B. Ivey in said paper upon his own responsibility, and were published in the Virginia Courier for the last time in its issue of October 15, 1901. The complainant State Council allows the Virginia Courier to have printed at its head the words "Official Organ of the State Council of Virginia." The complainant never objected to the publication therein of the objects of the National Order.

16. Said T. B. Ivey was a member of the Legislature of Virginia when the said Act of the General Assembly was paassed incor-

porating the plaintiff, and the said charter was strongly opposed by those representing the National Council, and the printed circular marked "V" was distributed among the members of the
171 Legislature, and especially in the room of the Senate Committee on General Laws.

The said T. B. Ivey offered in the Virginia Legislature the bill under which the complainant State Council was chartered, and took an active part in having the same passed.

17. The membership in the State acknowledging allegiance to the plaintiff State Council is over ten thousand, and somewhere between ten thousand and ten thousand five hundred.

The membership in the City of Richmond acknowledging allegiance to the plaintiff State Council is eighteen hundred and sixty-three.

The membership in the State acknowledging allegiance to the defendant State Council is 3,540.

18. The National Council was chartered under the laws of Pennsylvania, and is a corporation existing under the laws of that State. Shortly after the Minneapolis session, litigation arose in the State of Pennsylvania between Derry Council, No. 40, Jr. O. U. A. M., and the State Council of Pennsylvania, in which the plaintiff insisted that the acts of the Minneapolis session were invalid. Upon the rendition of a decree in said suit, an appeal was taken to the Supreme Court of Pennsylvania. A copy of said opinion of the Supreme Court is filed, marked "D," with the answer, and is to be used as evidence of the decision of the court, subject to the objection of the court for irrelevancy.

19. The requirement of Art. XXV (see Ex. C. with bill), that the amendment shall be referred to the Committee on Law before final action shall be taken thereon, was fully complied with, as shown by the proceedings of the Louisville session of 1898 of the National Council. The report of the Law Committee, to whom had been referred the amendments offered and the General Laws and Constitution of the National Council and subordinate Councils for general revision, will be found in Exhibit "E," filed with the answer, beginning at page 114.

20. The $5,000.00 was not a gift or subscription to the Beneficiary Degree, but a *bona fide* loan to said Beneficiary Degree, but the whole has not yet been repaid. Said Beneficiary Degree, or insurance branch, was not to be assisted by levying a per capita tax, and no one is required to take said degree, membership being purely voluntary on the part of the Order.

21. At the time of the revision in Minneapolis, five years
172 had elapsed since the last general revision, which was in 1894.

22. The judicial department was established because it was deemed by the National Council a more intelligent method of administering the affairs of the Order, and that it would save the time of the National Council at its annual sessions, but the complainant does not admit that such results would be accomplished by such change.

23. The basis of representation cannot be made equal, and the representatives of complain-t have never submitted an equal plan to the National Council. At the Philadelphia session of the National Council, held in 1900, the basis of representation was changed, and such change was made more favorable to the complainant.

24. The old State Council was represented at the Minneapolis session and their representatives remained throughout its entire length and participated in its actions, but their course of conduct and objection appeared in Ex. B, filed with answer.

25. The old State Council at its Cape Charles session adopted a resolution to appoint a committee to seek an adjustment of the differences existing between the old State Council and the National Council. On that committee the minority of the old State Council, which was opposed to antagonizing the National Council, had no representation. The committee appointed went to Philadelphia and joined other similar committees in presenting the petition set forth on pages 16 and 17 of Exhibit "F," with answer.

26. Prior to the Philadelphia session of the National Council, the then National Councillor, learning that the State Council would probably not send its representatives to that session, addressed the then State Councillor requesting that the State Council be represented, assuring his every effort to obtain their admission, which letter, and the action thereon, appears on page 111, Exhibit "J." The Executive Board of the old tSate Council, instead of permitting the representatives, whose expenses were to be paid by the National Council (if admitted) to attend, addressed the representatives, requesting that they would not attend, and in said letter stated that they had lost their right to admission in the National Council. Notwithstanding this action, two of the representatives from Virginia, being in sympathy with a minority of the State Council, did attend the Philadelphia session, and were admitted to the floor of the National Council. The representatives who did not attend had
173 no assurance other than the foregoing letter from the National Councillor, who had no right to admit them, that they would be admitted. They had been suspended, and if not admitted they would have had their own expenses to pay.

27. Under the jurisdiction of the National Council subordinate Councils were first organized in Virginia, and when a sufficient number were in existence a State Council was formed, to which a charter was duly granted, and under which the old State Council operated until March, 1900, when complainant obtained a charter from the General Assembly, under which it now claims to exist and exercise its powers. A copy of a form of a charter granted State Councils by the National Council is filed with the answer, marked Exhibit "K." By the terms of this charter, State Councils are given the power to act as a State Council of the Order, to grant charters to subordinate Councils, to make laws, provided the State Council always act in conformity to the laws and usages of the Order and in obedience to the National Council.

29. After the old State Council had obtained a copy of its charter

as above stated, the complainant obtained a charter of incorporation from the General Assembly of Virginia, under which it claims to have been absolved from all allegiance and obligations to the National Council as at present constituted, and under which it claims the right to retain the name, private work, emblems and regalia claimed by the defendant State Council, and claims the right to erect itself into a body independent of and to the exclusion of the present National Council, and any State Council created by the present National Council.

29. The old State Council of Virginia refusing to recognize as binding upon it the Constitution and General Laws adopted at the Minneapolis session and to obey the rules and requirements of the National Council, charges were preferred against it before the National Judiciary, and it was duly summoned, and failing to appear, a decree was rendered against it, which after giving due time for compliance with the terms thereof, became operative, and the charter of the old State Council was revoked. Copies of the docket entries, marked Exhibit "L;" journal entries, marked Exhibit "M," and decree, marked Exhibit "N," are filed with the answer. At the same time the National Council recognized as existing and operative the subordinate Councils which recognized as existing and binding the Constitution and General Laws adopted at the Minne-
174 apolis session, and which refused to participate in the acts deemed insubordinate by the National Judiciary, and attempted to prevent the same, and refused to become a part of the body organized under the charter granted by the Legislature of Virginia, but continued a part of the National Order. The subordinate Councils so refusing, petitioned the present National Council for a State Council charter, and for their embodiment and association under the name of and as the State Council of Virginia Jr. O. U. A. M., the title and name which the National Council had always bestowed upon the association of the subordinate Councils in this State. In accordance with this petition the National Council created a State Council under such name and title on the 2nd day of March, 1901, and gave it all the rights, powers and privileges that had been previously granted the old State Council. In said State Council so created the following, who are made defendants to the bill of complaint in this cause, were the officers: E. L. S. Bouton, State Councillor; James R. Mansfield, Vice-State Councillor; Dr. E. H. Heaton, Junior Past State Councillor; George B. Sprow, Jr., State Council Secretary; John E. Boehm, State Council Treasurer; E. R. Boyer, State Council Conductor; C. P. Blunt, State Council Warden; W. J. Gibson, State Council Inside Sentinel, and O. B. Hopkins, J. R. Jewell, B. B. Bott, James S. Groves and J. R. N. Curtain, are members. And the successors of such of the aforesaid officers as are not now in office are, by agreement, made parties to this bill.

30. Counsel on both sides reserve the right to object to any of the foregoing facts as irrelevant.

31. It is further agreed that in case either side shall appeal in

this cause, that so much of the exhibits filed by either side shall be put into the appeal record as shall bear upon the question at issue. In case the counsel for the respective parties cannot agree upon what shall or shall not be printed, the Judge of the Chancery Court shall finally decide the points in dispute.

SAMUEL A. ANDERSON,
FRANK W. CHRISTIAN,
Counsel for Plaintiff.
JOHN C. WECKERT AND
MEREDITH & COCKE,
For Respondents.

175 *Additional Facts.*

(Filed at Bar.)

The following circular was circulated in the Legislature prior to the incorporation of the State Council of Virginia Jr. O. U. A. M.:

To the General Assembly of Virginia:

The three Councils of the Jr. O. U. A. M. of Roanoke City, Virginia, in joint session, on the 5th day of February, 1900, having accidentally seen a copy of the House bill No. 264, introduced by Mr. Ivey, to incorporate the State Council of Virginia, do earnestly request the General Assembly of Virginia not to pass the act for the following reasons:

1st. Because neither the members of the present State Council, who would be charter members under this act, nor the National Council, which created the Virginia State Council, authorized it.

2nd. The State Council of Virginia is now held in insubordination for violation of the laws of the Supreme Order, the National Council, by which the State Council was created and under which it now holds its charter, and having violated the laws of the organization, charges have been preferred against it and its charter has been suspended, pending the investigation of the charges.

3rd. Because the Jr. O. U. A. M. is a national organization, linked together from State to State, over forty-four States of the Union. Its government is composed of the executive, the judiciary and the legislative, the functions of each being well defined and similar to the States of the Union, and it is governed by the laws eminating from the supreme head, the National Council, similar to the Congress of the United States.

4th. Because the General Assembly of Virginia, by incorporating the State Council, would not only break the link and sever the union of the Order, but would drive out of the State of Virginia the na-

tional organization, as provided by the terms of the third section of the bill.

Respectfully submitted,

RELIANCE COUNCIL, NO. 18, JR. O. U. A. M.,
By J. W. WERTZ, *Councilor.*

176 Attest: W. H. WILLIAMS,
Secretary.

ROANOKE COUNCIL, NO. 70, JR. O. U. A. M.,
By W. B. WERNWAG, *Councilor.*

Attest: G. W. CRUMPECKER,
Secretary.

AMERICAN COUNCIL, NC 738, JR. O. U. A. M.,
By F. N. SMITH, *Councilor.*

Attest: H. M. WHITTINGTON,
Secretary.

That the defendant offers in evidence the act of Assembly of Virginia contained in Acts 1897-98, chap. 688, p. 734, *et seq.*

The order known as the Jr. Order United American Mechanics has never performed any of the requirements set forth in said act.

That the fraternal orders known as the Masons, Knights of Pythias, Odd Fellows, Red Men, and other such orders have had their grand and subordinate lodges in this State before, at the time of, and after the passage of the Act of Assembly relied upon by the complainant as incorporating it, and that the State has never passed any similar act as to any one of such fraternal orders.

Matthias Manual may be referred to and any part thereof read in evidence.

The State Council was first chartered in 1855, although there had been subordinate Councils prior to that date.

At the time of acceptance of charter the subordinate Councils who refused to accept the legislative charter were only 24 Councils out of 147 Councils.

The Act of Assembly entitled "An Act to incorporate the Trustees of Lovettsville Council, No. 101, Jr. O. U. A. M., of Lovettsville, Virginia," approved January 27, 1898. (See Acts 1897-8, p. 141, chap. 137.)

That the said Lovettsville Council is in existence, refused to join the complainant and forms a part of the defendant State Council.

MEREDITH & COCKE,
SAMUEL A. ANDERSON,
Council.

And at another day, to-wit: At a Court of chancery for the
177 City of Richmond, continued by adjournment and held in the court-room thereof, in the City Hall in said city, on the 21st day of July, 1904.

In Chancery.

THE STATE COUNCIL OF VIRGINIA JUNIOR ORDER UNITED AMERICAN MECHANICS OF THE STATE OF VIRGINIA, a Corporation, Complainant,

vs.

THE NATIONAL COUNCIL OF THE JUNIOR ORDER UNITED AMERICAN MECHANICS OF THE UNITED STATES OF NORTH AMERICA, a Corporation; E. L. S. BOUTON, JAMES R. MANSFIELD, E. H. HEATON, GEORGE B. SPROW, JR., J. E. BOEHM, O. B. HOPKINS, JAMES S. GROVES, E. R. BOYER, C. P. BLUNT, W. J. GIBSON, J. R. JEWELL, B. B. BOTT, J. R. N. CURTIN, and Their Successors, as Officers of the Voluntary Association, Mentioned and Referred to in the Bill of the Plaintiff as Having Been Organized at the City of Alexandria, in the State of Virginia, on or about the 2nd day of March, 1901, and Certain Parties Unknown, Respondents.

This cause came on this day to be heard on the bill of the plaintiff and the exhibits therewith filed, on the answer and demurrer of the National Council of the Junior Order of the United American Mechanics of the United States of North America to the said bill, and the exhibits therewith filed; which answer is prayed by said defendant to be treated as a cross bill, and on the general replication to said answer, on the separate answers of E. L. S. Bouton, James R. Mansfield, E. H. Heaton, George B. Sprow, Jr., J. E. Boehm, O. B. Hopkins, James S. Groves, E. R. Boyer, C. P. Blunt, W. J. Gibson, J. R. Jewell, B. B. Bott and J. R. N. Curtin, which refer to and adopt as their own the answer and prayer of the said National Council, all of which papers have been heretofore filed, on the general replication to said answers, on the paper marked "Agreed Facts," and the documentary evidence therein mentioned and referred to; on the paper marked "Additional Facts Filed at Bar," and the documentary evidence, and Act of the General Assembly, therein mentioned and referred to, all this day filed, and was argued by counsel.

On consideration whereof, the court doth adjudge, order and decree that said demurrer be, and the same is hereby, overruled, and that the prayers of said answers, treated as cross bills, be, and the same are hereby, denied; and the court being of the opinion
178 that the Act of the General Assembly of Virginia, passed on the 17th day of February, 1900, entitled An Act to incorporate the State Council of Virginia Junior Order of United American Mechanics of the State of Virginia, is a constitutional and valid act, doth so declare, and doth adjudge, order and decree that the plaintiff in this suit, by its corporate name of the State Council of Virginia Junior Order of United American Mechanics of the State of Virginia, is the supreme head of the Junior Order of United American Mechanics in the State of Virginia, and in said State of Virginia shall have the power to make such constitutions, laws, by-laws, rules and regulations as shall be necessary for its government, and shall have, in the State of Virginia, full and exclusive authority and jurisdiction to grant charters to subordinate Councils, Junior

Order United American Mechanics in the State of Virginia, with power to revoke the same for cause, and to make such constitutions, by-laws and rules of order as it may deem just and proper for the government of subordinate Councils; and that its officers shall be such as it may deem necessary, and shall be elected at such times and places, and in such manner as its rules and by-laws may prescribe.

And the court doth further adjudge, order and decree that the said National Council of Junior Order United American Mechanics of the United States of North America, and the other defendants to said bill, to-wit: E. L. S. Bouton, James R. Mansfield, E. H. Heaton, George B. Sprow, Jr., J. E. Boehm, O. B. Hopkins, James S. Groves, E. R. Boyer, C. P. Blunt, W. J. Gibson, J. R. Jewell, B. B. Bott and J. R. N. Curtain, who, as shown by their answers, are the agents and representatives of the said National Council of the Junior Order of United American Mechanics of the United States of North America, a Pennsylvania corporation, and their successors, as officers of the voluntary association, mentioned and referred to in the bill of plaintiff as having been organized at the City of Alexandria, in the State of Virginia, on or about the 2nd day of March, 1901, with the same name as that of the plaintiff, who, by agreement of counsel, contained in stipulation 29 of the "Agreed Facts," are made defendants to this suit and all others who are made defendants to this suit under the general description of parties unknown, be, and they are hereby, jointly and severally, perpetually enjoined and restrained from continuing the use within the State of Virginia of the name of State Council of Virginia, Junior Order United American Mechanics of the State of Virginia, or any other name of like import likely to be taken for that of plaintiff; and from the use of the seal of said plaintiff within the State of Virginia; and from carrying out,
179 within the State of Virginia, under the name of the plaintiff, or any name of like import, any of the objects for which the said National Council of the Junior Order of United American Mechanics of the United States of North America, or the said voluntary association organized on or about March 2nd, 1901, as aforesaid, were organized; and from using within the State of Virginia the name of the said plaintiff or any other name of like import in the pursuit of the objects for which the said plaintiff was chartered; and that all and any the said defendants, under the name of plaintiff, or any other name of like import, be enjoined from granting Charters to subordinate Councils within the State of Virginia, and from representing themselves to subordinate Councils within the State of Virginia as the head of the said Order in the said State of Virginia, and from interfering within the said State of Virginia, in any way with the pursuit by the said plaintiff of its objects and purposes within the State of Virginia; and that the said National Council of the Junior Order of United American Mechanics of the United States of North America, and the said voluntary association organized on or about March 2nd, 1901, as aforesaid, and their agents and officers be, and they are hereby, *perpetually* enjoined and restrained from designating their officers within the State of Virginia by the appellations

set forth in the bill used by the plaintiff for its officers or agents, and from continuing the use in the State of Virginia of said appellations.

And the Court doth further adjudge, order and decree that the plaintiff recover of the defendants its costs in this behalf expended.

Defendants signifying by counsel their intention to appeal from this decree, the same will be suspended for ninety days from the date hereof, provided the defendants, or some one for them, within thirty days from the date of this decree, give bond before the clerk of this Court, with security to be approved by him, according to the provisions of section 3456 of the Code, in the penalty of one hundred dollars.

In the Chancery Court of the City of Richmond.

THE STATE COUNCIL OF VIRGINIA, JR. O. U. A. M. OF THE STATE OF VIRGINIA,

vs.

THE NATIONAL COUNCIL OF THE JR. O. U. A. M. OF THE UNITED STATES OF NORTH AMERICA ET ALS.

180 ADDENDA TO RECORD.

MEMO.—It is agreed that on pages 95 to 106 of Exhibit "D" with bill, appears the report made by the Legislative Committee of the Order of the National Council at Minneapolis, which report was approved.

Report of Legislative Committee.

To the Officers and Members of the National Council in annual session assembled at Minneapolis, Minnesota:

Your Legislative Committee would respectfully report as follows:

Immediately after the adjournment of the National Council in June, 1898, this Committee met in Philadelphia at the office of the National Council, and organized by electing Rev. M. D. Lichliter as chairman, and Stephen Collins as secretary, and correspondence and press committee.

The only other meeting was in Washington, D. C., December 5th, 1898.

It was not deemed necessary to send out petitions for the recent session of Congress, as a very large number had been sent in to the same members earlier in the year. The excitement and vast amount of legislation incident to the war precluded other legislation from receiving much attention. Much work was done with the members of Congress to endeavor to get the Lodge bill brought up for consideration. Earlier in the session the first effort was unsuccessful, as it was impossible to get the friends of the bill on hand.

The Chairman of the Committee on Immigration was sincere in his efforts to get the bill before the house, but many of the leaders on both sides seemed determined to prevent its consideration.

On December 14th another determined effort was made and it failed by just two votes, the vote standing ayes 101, nays 103. One object gained was to get an aye and nay vote and put the members on record. This is herewith given for the information of the membership and for their action in the future. Many former members have been retired, owing to their opposition to American legislation, especially to the restriction of immigration, and it is to be hoped that our membership will watch these congressmen who voted nay, and do their best to secure their defeat when they next come forward for nomination and election.

The vote was as follows:

* * * * * * *

181 MEMO.—It was agreed that by consent the names are omitted, but that it was an aye and naw vote, giving by States the names of the congressmen and which way each voted. The report proceeds as follows:

This Committee found it necessary to try to offset the petitions which had been sent into congressmen by various associations of foreign born and Roman Catholic residents, and the following circular letter was prepared and mailed to each member of Congress.

It was well known to every congressman that the Jr. O. U. A. M. was active in its support of the Lodge bill, so it was decided to try this other association in addition to our own.

National Immigration Restriction Association, Office of the Secretary.

PITTSBURG, PA., *November* 28, 1898.

Hon. —— ——, Washington, D. C.

DEAR SIR: The above named association was formed for the purpose of securing the passage of laws for the proper restriction of immigration. It is national in its character, with members in every State in the Union, it is strictly non-partisan and no-sectarian, and with but the single object of protecting our country from the vast influx of undesirable and degraded immigrants.

This class of immigration has always been injurious to our citizens and the institutions of the country, industrially, morally and socially, and while there has been no alarming increase during the season just closed, that fact is undoubtedly owing to the war then existing. But immigration is very certain to largely increase next year when the anticipated prosperity will attract hundreds of thousands of undesirable immigrants.

The recent war, with its results, has advertised this country in every corner of the world, and immediate action should be taken to provide for the proper sifting of this stream of humanity coming from the four quarters of the globe.

At the last session of the 55th Congress the Senate passed a bill, No. 112, known as the "Lodge Bill," and it is now on the Speaker's desk in the House, whence it can be taken at any time for
182 consideration and passage. We believe the bill to be very conservative in its provisions, but a fair advance in the right direction.

Almost all labor organizations in the country are favorable to this bill, and they, with thousands of others, have petitioned to Congress for its passage. No intelligent and fair-minded citizen of the United States, native or foreign born, objects to its requirements excepting those who are either directly or indirectly interested in the immigration business, such as the steamship companies and the employers of cheap imported labor, etc.

This is one of the most important questions now before Congress and one in which all American citizens are deeply interested.

Representing thousands of your constituents who are closely watching this matter, we urge you to give your active assistance to the Chairman of the Committee on Immigration and Naturalization in his efforts to secure early consideration for this bill.

It is especially desirable that it pass without amendment, as that would send it back to the Senate, causing much delay, and possibly prevent final passage at this session. If any other features are desirable, they can easily be incorporated in another bill.

We earnestly solicit your favorable consideration to the above.

Yours respectfully,

NATIONAL IMMIGRATION RESTRICTION ASS'N.,
By the Secretary, STEPHEN COLLINS.

In each one addressed to a Republican member was inserted the following slip:

A PLANK

From the Republican Platform Adopted at St. Louis, June 18, 1896.

"For the protection of the equality of our American citizenship and of the wages of our workingman against the fatal competition of low priced labor, we demand that the immigration laws be thoroughly enforced and so extended as to exclude from entrance to the United States those who can neither read nor write."

Believing that it is well to keep before our members all that pertains to the immigration question, we have spent considerable time in compiling, in a compact and concise form, much valuable information on this subject.

183 The figures are absolutely correct, as they are obtained from the official annual reports of the Commissioner General of Immigration. These reports contain exhaustive tables, covering every detail of the immigration business, but we have prepared only what can be used in brief form. We show the arrival of aliens by decades from 1820 to 1890, then for each two years from 1891 to 1896, and for 1897 and 1898, the data being brought up to the close of each fiscal year, June 30.

No official records were made prior to 1820, but it is estimated by good authorities that from the close of the Revolutionary War up to 1820 there arrived about 250,000 aliens. These figures would make the total immigration from the close of the Revolutionary War up to the 30 of June, 1898, amount to 18,651,807. From

1820 to 1840 the immigration steadily increased each year from 8,385 in the former year to 84,066 in 1840. In 1842, 104,565 landed. In 1850 the number reached 310,004, and in 1854, 427,833, which was the high water mark up to 1873, when 473,141 arrived. From 1854 the arrivals steadily decreased to 121,282 in 1859, and in 1861 and 1862 less than 92,000 landed each year.

From 1873 the arrivals again decreased to 1878, when 157,776 was the total, but in 1880 the reaction started, owing to the better times following the panic, and in that year 484,196 arrived; the next year increased to 695,163, and in 1882 the immense number of 816,272 immigrants landed on our shores. Since that year the highest number arriving in any one year was 623,084 in 1892. The decrease since then has been gradual, until last year but 229,299 came in.

There is no doubt that this decrease was caused by the hard times in this country during 1895-96 and 1897, and the war last year. Immediately after the close of the Civil War the immigration increased wonderfully, only to decrease during years of business depression, and had it not been for recent war, 1898 would have witnessed a great increase in immigration.

Already it has started in, and ship load after ship load are now dumping their thousands at Ellis island. It is believed that fully 400,000 to 500,000 will arrive during 1899.

The following table shows the arrival by decades from 1820 to 1890, ending with:

MEMO.—It is agreed that certain tables on pages 101 and 102, showing immigration into the United States during certain decades and years, are, by consent, omitted.

184 The report then proceeds:

Take for instance the immigration for Austria-Hungary, which includes Bohemia, Moravia, Gilicia, and Bukowina prior to 1860, it was so small that it was not kept separately, but since 1860, 853,056 have come here from that country.

Then follow the figures from Italy, which are somewhat similar, excepting that they greatly exceed the Austria-Hungarians each year since 1892. In the earlier years of the century the great bulk of aliens came from Great Britain and Germany, during the ten years from 1841 to 1850 inclusive 86 per cent. of the entire arrivals was from Germany and Great Britain; Ireland alone furnishing 45 per cent., Germany 25, and England, Scotland and Wales over 15 per cent.

During the year ending June 30, 1898, the arrivals from Germany and Great Britain amounting to only 23 per cent. of the whole, Germany furnishing only 7 per cent., Ireland less than 11 per cent. and England, Scotland and Wales about 5 per cent.

Now in contrast to the above take the immigration from Austria-Hungary, Italy and Russia (including Poland and Finland). For the decade ending 1850, the arrivals from these countries amounted to one-tenth of one per cent. For decade ending 1860, about one-half of one per cent. During the next ten years it raised very little, during the decade ending 1880 it increased to 6 per cent. of the total,

and in 1890 the immigration from these countries for the preceding ten years amounted to 17 per cent. of the total. Then the last fiscal year, ending last June, out of a total of 229,299 immigrants, Austria-Hungary, Italy and Russia-Poland present 132,964, or about 58 per cent. of the total.

All of these deductions show that as the most objectionable class of immigrants have steadily increased, the more desirable class have decreased. Many more very interesting and instructive comparisons and deductions may be made from the foregoing statistics.

A number of bills have from time to time been presented in Congress, having for their purpose the protection of the United States flag from mutilation or desecration. Some of these were so radical that there was no chance for their passage. Your committee prepared the following bill, which was introduced by Hon. John Dalzell, of Pennsylvania:

A Bill

To Protect the American Flag From Insult and Desecration.

Be it enacted by the Senate and House of Representatives
185 of the United States of America, in Congress assembled, That it shall be unlawful for any person or persons to willfully and maliciously take down, pollute, injure, or remove, or in any manner insult, damage, or destroy any American flag which is now or hereafter may be put, erected or placed on or in any private or public building or place, or on any private or public highway or grounds. Any violation of this act shall be punishable, on conviction, in either of the circuit or district courts of the United States or the Supreme Court of the District of Columbia, or the courts of the territories, within their respective jurisdictions, by a fine of fifty dollars for each offense, or by imprisonment not exceeding six months, or both, at the discretion of the Court.

It was shown to Senator Hoar, chairman of the Judiciary Committee of the Senate, and he said it was the best of the many bills on the subject which have been introduced, and that it would have his support when it reached the Senate.

This bill was referred to the Judiciary Committee of the House of which Mr. D. B. Henderson is chairman, and it was very promptly pigeon-holed by that gentleman—he refusing to present it favorably to the House.

Sectarian Appropriations.

While this Committee was unable to secure the desired legislation for the restriction of immigration, we were successful in advancing one of our principal objects in preventing appropriations for Sectarian institutions.

Considerable work was done in Washington City on this line and the following circular was sent to all Councils in Philadelphia under date of January 26, 1899. It will explain itself.

National Legislative Committee, Junior Order United American Mechanics, Office of the Secretary, 432 Diamond St.

PITTSBURG, PA., *January* 26, 1899.

To all Councils in Philadelphia.

DEAR SIRS AND BROTHERS: A matter of the most urgent character calls for prompt action in an emergency and I trust that every member of every Council in Philadelphia will take prompt and decisive action.

When the District of Columbia Appropriation Bill passed
186 the House of Representatives at Washington, on December 13th, 1898, appropriations for three Sectarian Institutions were omitted from the bill, the reason being given by Mr. Grout, the chairman: First, That the Commissioners of the District did not desire that two of them should be made, And second, "They were omitted for the purpose of keeping faith with a declaration which Congress has made heretofore, that these Sectarian appropriations should be dispensed with." After a bitter discussion the bill passed as recommended by Mr. Grout.

On January 7th, in the U. S. Senate, this bill was so amended as to appropriate several thousand dollars to the "Church Orphanage Association of St. John's Parish," "The St. Anne's Infant Asylum," "House of Good Shepherd," "St. Rose Industrial School," and "St. Joseph's Asylum." A total of $15,700.

On January 11th, the House refused to concur in these amendments, and appointed a Committee of Conference, naming Mr. Grout, of Vermont; Mr. Bingham, of Pennsylvania, and Mr. Dockry, of Missouri. On January 12th, the Senate insisted on its amendments and appointed as conferees on the part of the Senate, Mr. Allison, Mr. Cullom and Mr. Cockrell.

It has now come to my knowledge that Mr. Grout is holding out against these amendments, Mr. Dockery favors them, and Mr. Bingham, while originally opposed to them, being now under immense pressure, which is being brought upon him by the friends of the Sectarian appropriations, is wavering, and may join Mr. Dockery and recommend that the House concur.

Mr. Bingham is a representative from the City of Philadelphia, and a pressure must be brought upon him at once to stand firm, for the sentiment of his constituents is with him. There is not a minute to spare. Get in petitions, letters and resolutions. Have public meetings if possible, to take immediate action. Show Mr. Bingham that 25,000 members of the Jr. O. U. A. M., in addition to thousands of other American citizens in the City of Philadelphia, demand that he stand firm as opposed to government appropriations for sectarian purposes.

This is but an entering wedge, and if these appropriations are granted, thousands will be made to Indian schools, etc.

Fraternally your, STEPHEN COLLINS,
Secretary National Legislative Committee.

187 The Councils in Philadelphia acted promptly, and Mr. Bingham remarked subsequently that he was actually astounded at the avalanche of letters, petitions and resolutions he received, and these undoubtedly had an effect. Powerful influences were at work to get this $15,700 for the use of the one denomination that keeps a corps of lobbyists at the capital in its interests. We interviewed a large number of Representatives and Senators and secured their pledges to oppose these appropriations, and on the morning of March 4th the appropriations bill passed, with the Sectarian items stricken out. General W. W. Grout, of Vermont, who was in charge of the bill, vigorously opposed the Sectarian appropriations, while Mr. D. B. Henderson, of Iowa, acted, as usual, as the champion of the Roman Catholic Church. In a bitter speech of five minutes Mr. Henderson denounced "a secret society that works in the dark," and blamed the defeat of the appropriations on this Society. Those in the best position to speak on the subject, and who were on the ground, have given the credit, for the defeat of these Sectarian appropriations unqualifiedly to the Jr. O. U. A. M.

A large amount of detail work was done during the year, but no circulars or petitions were sent out to subordinate Councils, as it was not deemed necessary, and it was our desire to save all unnecessary expense. For the same reason the Secretary was in Washington only such length of time as was really necessary, as the bulk of the work was done by correspondence. For some time prior to the nominations and elections last fall, a large number of inquiries were received concerning the official records of Congressmen and Senators, and these were hunted up and sent up to our members. We feel satisfied that we assisted very largely in the defeat of some members of the House and Senate, who have opposed our objects, and also aided materially in the re-election of those who have stood by us. We believe it very essential to our future success that our member-hip should follow more strictly than heretofore the last paragraph of the "Declaration of Principles," which says: "We, as members of this Order, affirm our allegiance to the Objects of the Order as paramount to any partisan affiliation."

A member of Congress who will stand up for our objects and principles, and aid us in securing legislation on these lines, should receive the support and assistance of our members when he needs help; and those who oppose our legislation should be made to understand that we will actively oppose their re-election. The question as to whether they be Democrats or Republicans should be eliminated, as our declaration affirms it will be. Only in this way can our influence be felt in Washington.

188 We recommend that renewed efforts be made to secure the passage of a bill similar to the Lodge bill, and a bill to prevent the desecration of the flag, similar to the Dalzell bill.

Also that every effort be made to prevent any appropriations being granted by Congress for sectarian institutions, or any appropriations to sectarian Indian institutions.

We also recommend that the same arrangements be made for the

rying out the work by the National Legislative Committee as during the last three years.

We have further recommendations to make during the session.

Respectfully submitted,

(Signed) M. D. LICHLITER,
JAMES CRANSTON,
R. J. ARMSTRONG,
H. H. BILLANY,
STEPHEN COLLINS.

Roanoke Convention.

MEMO.—It is agreed that on pages 3, 4, 5, 6, 7, 8 and 9, of Exhibit "J," filed with answer, appears the names of those who participated in the Roanoke Convention.

Among those names appears the names of the following defendants: J. R. N. Curtin, representing Alexandria Council, No. 33; John C. Weckert, Grove Council, No. 40; G. W. Crumpecker, Roanoke Council, No. 70; E. H. Heaton, Waterford Council, No. 75; E. L. S. Bouton, Vienna Council, No. 97; George B. Sprow, Jr., True American Council, No. 138; Past State Councilors O. B. Hopkins and J. E. Boehm, W. J. Gibson, Goodwill Council; E. R. Boyer, Belle Haven Council, No. 61.

The credentials of James S. Groves, of Industry Council, No. 22, were referred to a committee for report.

MEMO.—It is agreed that on pages 10, 11, 12, 13 and 14 appears the names of those voting for and against the substitute offered for the 1st section of the State Constitution, and for and against the 1st section as adopted.

For the substitute the following defendants voted: Past State Councilor J. E. Boehm, Representatives W. J. Gibson, J. R. N. Curtin, John C. Weckert, E. R. Boyer, G. W. Crumpecker, E. H. Heaton, E. L. S. Bouton and George B. Sprow, Jr.

When the substitute was lost, John C. Weckert voted for
189 the 1st section as proposed. Past State Councilor Boehm, Representatives W. J. Wilson, J. R. N. Curtin, E. R. Boyer, G. W. Crumpecker, E. H. Heaton, E. L. S. Bouton and George B. Sprow, Jr., voted against said 1st section as proposed and finally adopted.

Teste: CHAS. O. SAVILLE, *Clerk.*

Fee for copy, $6.40.

I, Charles O. Saville, Clerk of the Chancery Court of the City of Richmond, hereby certify that the foregoing is a true transcript of so much of the record as was ordered by counsel, and that notice in obedience to section 3457, Code of Virginia, 1887, has been duly given.

CHAS. O. SAVILLE, *Clerk.*

Fee for transcript of record, $82.00.

A copy.

Teste: H. STEWART JONES, *C. C.*

190 *Opinion by Judge James Keith, President.*

WYTHEVILLE, VA., *June* 15, 1905.

NATIONAL COUNCIL JUNIOR ORDER UNITED AMERICAN MECHANICS ET ALS.

v.

STATE COUNCIL JUNIOR ORDER UNITED AMERICAN MECHANICS.

Chancery Court of City of Richmond.

The bill of appellee avers that the State Council of Virginia, Junior Order United American Mechanics, a corporation, was chartered by Act of Assembly in February 1900, its objects being to maintain and promote the interests of Americans, to assist them in obtaining employment, to encourage them in business, to afford relief to the members and their families in case of accident, sickness or death, and to defray the expenses of their funerals or such other cases of distress as shall be defined by the constitution, by-laws, rules and regulations of the corporation. Before its incorporation it existed as an unincorporated organization, under the same name, and was subject, by virtue of the customs of the order, to the control of the National Council of the Junior Order of United American Mechanics of the United States, in so far as the latter acted within the scope of its objects, charter, constitution and laws.

191 In the year 1869 the State Councils of Pennsylvania, New Jersey and Delaware, which were benevolent and patriotic organizations, met and created the National Council, and delegated to it certain rights and powers, within which it should be regarded and respected as the supreme head of the order. The objects of the National Council were, first, to maintain and promote the interests of Americans, and shield them from the depressing effects of foreign competition; second, to assist Americans in obtaining employment; third, to encourage Americans in business; fourth, to establish a sick and funeral fund; fifth, to maintain the public school system of the United States of America, and to prevent sectarian interference therewith, and to uphold the reading of the Holy Bible therein. To these objects, fixed by the charter, and existing also before the incorporation of the order, there was added in the year 1897, the additional objects—Sixth: To establish or erect an orphans' home for the orphans of deceased members of the order, and to maintain the same.

The National Council, about the time of its organization in 1869, adopted a constitution and certain general laws for the promotion of its objects.

The bill then goes on to detail the provisions of the con-
192 stitution, especially with reference to its amendment, and sets out that in disregard of its fundamental law the National Council had undertaken to engraft upon it certain features, with reference to insurance, to the regalia of the order, to a national judiciary for the final decision of all matters of controversy arising

in the order, and for a change of representation. The contention of complaint is, that these changes were not made in accordance with the mode prescribed by the constitution for its own amendment, and that they are "unconstitutional, illegal and revolutionary measures;" that they were adopted without the approbation and against the wishes of the Councils of Virginia, both State and subordinate, and against the wishes and approbation of at least two-thirds of the membership of the order; and that complainant has exhausted all lawful means within the order to obtain a redress of its grievances, but without success.

On February 17, 1900, the General Assembly of Virginia gave a charter to the State Council of Virginia, which at a special meeting of that Council, called in accordance with the laws of the Order, convened in Richmond on March 14, 1900, and by a vote of 86 in the affirmative to 17 in the negative accepted the charter
193 and became an incorporated body.

The following are the salient features of the charter: First: It embraces all of the members of the State Council of Virginia, Junior Order United American Mechanics; Second: The State Council is made the supreme head of the Order in Virginia; Third: It is given full and exclusive authority and jurisdiction to grant charters to subordinate Councils and to make such constitutions, by-laws and rules of the Order as it may deem just and proper for the government of subordinate Councils.

The bill states that certain persons who are named and others, unknown, in March 1901 at Alexandria, Virginia, organized a new State Council of Virginia, by substantially the same name as that of complainant. This new organization denies that the plaintiff is the spreme head of the Order in Virginia, and the validity of its charter, and is doing everything in its power to destroy the plaintiff and to prevent its successful operation under its charter. It is further stated that the new State Council was organized for substantially the same purposes as those for which the complainant was organized and was afterwards chartered, and for the promotion of the objects which the plaintiff declares to be illegal and unconstitutional, and
194 wholly foreign to the objects of the Order; that complainant has adopted a seal and that the Alexandria organization has adopted substantially the same seal. The prayer of the bill is, that the National Council of the Junior Order of United American Mechanics of the United States of North America, E. L. S. Bouton, James R. Mansfield, and a number of other individuals, whose names are given, and others described as unknown, may be made parties to the bill; that the Alexandria organization may be declared illegal and the plaintiff be held valid; and that the defendants may be enjoined from continuing the use of the name State Council of Virginia, Junior Order United American Mechanics of the State of Virginia, etc., and from the use of the seal, and from carrying out the objects for which they were organized; that they may be enjoined from granting charters to subordinate councils and representing themselves to subordinate councils as the head of the Order in this

State, and from interfering in any way with the pursuance by the complainant of its objects and purposes.

To this bill the defendant, the National Council, filed its demurrer and answer, in which the private individuals named in the bill unite. The answer traverses all the material averments of the bill, maintains the legality of the changes made in the objects and constitution of the National Council of which the bill complains, and
195 alleges that the Act of the legislature by which the plaintiff was incorporated is in violation of the Constitution of the United States, in that its effect would be to impair the obligation of a contract and deprive the defendant of property without due process of law.

We shall not enter into a consideration of the charge made in the bill and denied in the answer, that the several changes in the objects and the constitution of the National Council were not made in conformity with the mode prescribed by the constitution itself for its own amendment, and are therefore void. They constitute the motive which induced the State Council of Virginia to apply to the legislature and obtain from it a charter, which, if valid, is conclusive of this controversy. The sufficiency of the motive inducing the plaintiff to apply for the charter is immaterial. It stands upon its charter rights and must prevail, unless the contention of the defendants, that it is repugnant to some provision of the Constitution of the State or of the United States can be maintained.

The rule governing courts in passing upon the constitutionality of a law is no longer to be controverted. A statute is not to
196 be annulled unless its repugnancy to the Constitution be palpable and plain. Upon this all the courts speak with one voice, and none more forcibly than the Supreme Court of the United States.

In Fletcher *v.* Peck, 6 Cranch, 128, Chief Justice Marshall said, "Whether a law be void for its repugnancy to the constitution, is, at all times, a question of much delicacy, which ought seldom, if ever, to be decided in the affirmative in a doubtful case. The court, when impelled by duty to render such a judgment, would be unworthy of its station, could it be unmindful of the solemn obligations which that station imposes. But it is not on slight implication and vague conjecture that the legislature is to be pronounced to have transcended its powers, and its acts to be considered as void. The opposition between the constitution and the law should be such that the judge feels a clear and strong conviction of their incompatibility with each other." See Tucker on Constitutions, Vol. 1, sec. 184. Cooley on Const. Lim., (7 Ed.) p. 228.

So it has been held that a court will not declare a statute unconstitutional and void solely on the ground of unjust and oppressive provisions, or because it is supposed to violate the natural, social, or political rights of the citizen, unless it can be shown that such
197 injustice is prohibited or such rights guaranteed or protected by the constitution. It is true there are some reported cases, in which judges have been understood to intimate a doctrine different from what is here asserted; but it will generally be found on an

examination of those cases, that what is said is rather by way of argument and illustration, to show the unreasonableness of putting upon constitutions such a construction as would permit legislation of the objectionable character then in question, and to induce a more cautious and patient examination of the statute, with a view to discover in it, if possible, some more just and reasonable legislative intent, than as laying down a rule by which courts would be at liberty to limit, according to their own judgment and sense of justice and propriety, the extent of legislative power in directions in which the constitution had imposed no restraint." Cooley on Const. Lim (7 Ed.) p. 233.

Nor, says the same author, can the courts declare statutes void "because they appear to the minds of the judges to violate fundamental principles of republican govvernment, unless it shall be found that those principles are placed beyond legislative encroachment by the constitution. The principles of republican government are not a set of inflexible rules, vital and active in the consti-
198 tution, though unexpressed, but they are subject to variation and modification from motives of policy and public necessity; and it is only in those particulars in which experience has demonstrated any departure from the settled practice to work injustice or confusion, that we shall discover an incorporation of them in the constitution in such form as to make them definite rules of action under all circumstances. * * *

"Nor are the courts at liberty to declare an act void, because in their opinion it is opposed to a spirit supposed to pervade the constitution, but not expressed in words." Cooley, (7 Ed.) pp. 237 *et seq.*

For, "When the fundamental law has not limited, either in terms or by necessary implication, the general powers conferred upon the legislature, we cannot declare a limitation under the notion of having discovered something in the spirit of the constitution which is not even mentioned in the instrument." People *v.* Fisher, 24 Wend. 215.

The act which in the case before us we are asked to declare to be an unconstitutional exercise of power, appears in the form of a charter granted to the State Council of the Junior Order of United
199 American Mechanics by the legislature on the 17th of February, 1900. It declares that certain persons therein named shall constitute a body politic and corporate, giving its name and style, and conferring upon it the powers and attributes ordinarily incident to a corporation. By the third section of this charter it is provided, that the said corporation shall have full and exclusive authority and jurisdiction to grant charters to subordinate councils, Junior Order United American Mechanics, in the State of Virginia, with power to revoke the same for cause; to make such constitutions, by-laws and rules of order as said corporation may deem just and proper for the government of said subordinate councils. The charter is prospective in its operation. It does not undertake, as we construe it, to deal with vested rights. It interferes with no right of property. It leaves the whole order of things as it existed with respect to the

society know as the Junior Order United American Mechanics unaffected, and all rights of persons and property which had been acquired under that organization undisturbed and unaffected, except that it declares that the corporation created by the act shall have full and exclusive authority and jurisdiction to grant charters to subordinate councils in the State of Virginia.

We have been unable to ascertain what contract right is
200 impaired or what provision of the Constitution, either of the United States or of the State of Virginia is violated by this charter. It is true that prior to its passage the National Council, the appellant in this case, had authority, by permission of the State, to organize subordinate councils and to transact the business of the order within the limits of the Commonwealth, but since the decision of Paul *v.* Virginia (8 Wall. 168) we had supposed that there was no longer any doubt that a State may exclude a foreign corporation entirely from doing business within its limits, or exact such security for the performance of its contracts with its citizens as in its judgment would best promote the public interest.

In that case the plaintiff in error, as agent of a New York insurance company, was indicted in a State court for issuing a policy without license, as required by the statutes of the State. The validity of the law having been affirmed by the State courts, a writ of error was awarded by the Supreme Court of the United States. The constitutionality of the Virginia statute was assailed as being in conflict with that clause of the Constitution which declares that the citizens of each State shall be entitled to all the privileges and immunities of citizens of the several States, and to the provision that Congress shall
201 have power to regulate commerce among the several States.

In answer to the first contention, Justice Field, speaking for a unanimous court, and reviewing all the decisions beginning with Bank of Augusta *v.* Earl, 13 Peters, 586, concludes, that "the privileges and immunities secured to citizens of each State in the several States, by the provision in question, are those privileges and immunities which are common to the citizens in the latter States under their Constitution and laws by virtue of their being citizens. Special privileges enjoyed by citizens in their own States are not secured in other States by this provision. It was not intended by the provision to give to the laws of one State any operation in other States. They can have no such operation, except by the permission, express or implied, of those States. The special privileges which they confer must, therefore, be enjoyed at home, unless the assent of other States to their enjoyment therein be given. * * * The corporation being the mere creation of local law, can have no legal existence beyond the limits of the sovereignty where created. As said by this court in Bank of Augusta *v.* Earle 'It must dwell in the place of its creation and cannot migrate to another sover-
202 eignty.' The recognition of its existence even by other States, and the enforcements of its contracts made therein depend purely upon the comity of those States—a comity which is never extended where the existence of the corporation or the exercise

of its powers are prejudicial to their interests or repugnant to their policy."

Proceeding to the second objection urged to the validity of the Virginia statute, which was founded upon the commerce clause of the Federal Constitution, Justice Field said: "At the time of the formation of the Constitution a large part of the commerce of the world was carried on by corporations. * * * This state of facts forbids the supposition that it was intended in the grant of power to Congress, to exclude from its control the commerce of corporations. The language of the grant makes no reference to the instrumentalities by which commerce may be carried on; it is general, and includes alike commerce by individuals, partnerships, associations and corporations. There is, therefore, nothing in the fact—that the insurance companies of New York are corporations—to impair the force of the argument of counsel. The defect of the argument lies in the character of their business. Issuing a policy of insurance is not a transaction of commerce. The policies are simple con-
203 tracts of indemnity against loss by fire, entered into between the corporations and the assured, for a consideration paid by the latter. These contracts are not articles of commerce in any proper meaning of the word. They are not subjects of trade and barter offered in the market as something having an existence and value independent of the parties to them. They are not commodities to be shipped or forwarded from one State to another, and then put up for sale. They are like other personal contracts between parties which are completed by their signature and the transfer of the consideration. Such contracts are not inter-state transactions, though the parties may be domiciled in different States. The policies do not take effect—are not executed contracts—until delivered by the agents in Virginia. They are, then, local transactions, and are governed by the local law. They do not constitute a part of the commerce between the States any more than a contract for the purchase and sale of goods in Vriginia by a citizen of New York whilst in Virginia would constitute a portion of such commerce."

"The only limitation upon this power of the State to exclude a foreign corporation from doing business within its limits, or hiring officers for that purpose, or to exact conditions for allowing the corporation to do business or hire officers there, arises where the corporation is in the employ of the Federal Government, or where its business is strictly commerce, interstate or foreign." Pembina Mining Co. *v.* Penn., 125 U. S. 181.

We think no argument is necessary to show that the appellant is in no sense an agency or in the employment of the Federal Government, or that its business does not in any respect appertain to interstate or foreign commerce.

We are of opinion that the charter granted by the legislature is in no respect repugnant to the Constitution of the U. S., or
204 of the State of Virginia, but is a valid exercise of legislative power. This conclusion is decisive of the case. Upon it the whole controversy hinges, and in answering it we have disposed of every contention made in the record which requires to be answered.

There is one view of the case, however, urged in the oral argument, to which we shall advert. On behalf of appellants it is urged that equity only protects rights of property, and that, in general, it leaves it to the courts of law to protect merely personal rights.

On behalf of appellee, it is claimed that the inhibitions of the Constitution of the United States apply to contracts which involve rights of property. And thereupon counsel for appellants seek to impale their adversary upon the horns of this dilemma—If property rights are involved, the act of the legislature impairs a contract with respect to them and is void; if property rights are not involved, then a court of equity has no jurisdiction, and appellee was wrongfully in court.

Property rights may arise, indeed may have arisen, under the charter granted by the legislature, and those rights are within the pale of the protection afforded by a court of equity. The exclusive authority to organize subordinate councils, to raise funds for
205 the relief of members of the order and their families, in case of accident, sickness or death, to defray the expenses of their funerals, or such other cases of distress as shall be defined by the constitution, by-laws, rules and regulations of the corporation, do or may involve rights of property within the protection of a court of equity; but it does not follow that a State may not prohibit a foreign corporation from coming within its borders for such purposes.

We do not understand the decree complained of to interfere with any vested right of person or property, but in order to put the matter beyond the reach of controversy we shall so amend the decree as to provide that nothing therein contained shall in any wise affect any such right as may have accrued prior to the 17th of February, 1900; and as amended the decree complained of is affirmed.

A copy.

Teste: J. M. KELLY, *C. C.*

Teste: H. STEWART JONES, *C. C.*

206 VIRGINIA:

In the Clerk's Office of the Supreme Court of Appeals, in the City of Richmond, on the 22nd Day of June, 1905.

The following copies of orders of this court, entered at its place of session at Wytheville, were this day received by the clerk here and are as follows:

* * * * * * *

"VIRGINIA:

In the Supreme Court of Appeals, Held at the Court House of Wythe County, in the Town of Wytheville, on Friday, the 16th Day of June, 1905.

NATIONAL COUNCIL JR. ORDER UNITED AMERICAN MECHANICS OF NORTH AMERICA, a Corporation; E. L. S. BOUTON, JAMES R. MANSFIELD, E. H. HEATON, GEORGE B. SPROW, JR., J. E. BOEHM, O. B. HOPKINS, JAMES S. GROVES, E. R. BOYER, C. P. BLUNT, W. J. GIBSON, J. R. JEWELL, B. B. BOTT, and J. R. N. CURTIN, Appellants,

v.

THE STATE COUNCIL OF VIRGINIA, JR. ORDER UNITED AMERICAN MECHANICS OF THE STATE OF VIRGINIA, Appellee.

Upon an Appeal from and Supersedeas to a Decree Pronounced by the Chancery Court of the City of Richmond on the 21st Day of July, 1904.

This cause, which is pending in this court at its place of session at Richmond, having been fully heard but not determined at said place of session, this day came here the parties, by counsel, and the court having maturely considered the transcript of the record of the decree aforesaid and arguments of counsel, is of opinion, for reasons stated in writing and filed with the record, that the decree appealed from should be and it is hereby amended so as to provide that nothing therein contained shall, in any wise, interfere with any personal or property rights which may have accrued prior to the 17th day of February, 1900;

And it is further ordered, that with this amendment, the decree complained of be affirmed, and that the Appellee, as substantially prevailing, recover of the Appellants thirty dollars damages and *and* its costs by it in this behalf herein expended.

Which is ordered to be entered in the order book here and forthwith certified, together with a certified copy of the opinion in this case, to the Clerk of this Court at Richmond, who will enter this order in the order book there and certify it to the said Chancery Court of the City of Richmond.

Appellee's costs at Wytheville $1.77.

A copy.

Teste: J. M. KELLEY, *C. C.*

Teste: H. STEWART JONES, *C. C.*"

207 In the Supreme Court of Appeals of Virginia, at Richmond.

NATIONAL COUNCIL JUNIOR ORDER UNITED AMERICAN MECHANICS ET ALS.

v.

STATE COUNCIL JUNIOR ORDER UNITED AMERICAN MECHANICS.

STATE OF VIRGINIA, *City of Richmond, To wit:*

I, H. Stewart Jones, Clerk of the Supreme Court of Appeals of Virginia, at Richmond, do hereby certify that the foregoing printed record, contained in one hundred and eighty-nine pages and one page of index, and seventeen additional manuscript pages, is a true and perfect copy of the record of the suit aforesaid remaining in the Clerks Office of the said Court at the City of Richmond, Virginia, upon which said record the case was heard, tried and determined by the court aforesaid.

In witness and attestation whereof, I hereunto set my hand and affix the seal of said court at Richmond, Virginia, on this, the 29th day of June, 1905.

[Seal Supreme Court of Appeals of Virginia, Richmond.]

H. STEWART JONES,
Clerk of the Supreme Court of Appeals of Virginia, at Richmond.

STATE OF VIRGINIA, *City of Richmond, To wit:*

I, James Keith, one of the judges, and President, of the Supreme Court of Appeals of Virginia, do hereby certify that the attestation of the above record of National Council, Junior Order United American Mechanics, *et als.*, *v.* State Council, Junior Order United American Mechanics, remaining in the Clerk's Office of the said Court at Richmond, Virginia, made by H. Stewart Jones, the Clerk of said Court at Richmond, aforesaid, is in due form.

Given under my hand and seal this, the 29th day of June, 1905.

JAMES KEITH, [SEAL.]
President of the Supreme Court of Appeals of Virginia.

208 To the Honorable James Keith, President of the Supreme Court of Appeals of Virginia:

NATIONAL COUNCIL, JR. O. U. A. M. OF NORTH AMERICA, a Corporation; E. L. S. BOUTON, JAMES R. MANSFIELD, E. H. HEATON, GEORGE B. SPROW, JR., J. E. BOEHM, O. B. HOPKINS, JAMES S. GROVES, E. R. BOYER, C. P. BLUNT, W. J. GIBSON, J. R. JEWELL, B. B. BOTT, and J. R. N. CURTIN

vs.

THE STATE COUNCIL OF VIRGINIA, JR. O. U. A. MECHANICS OF THE STATE OF VIRGINIA, a Corporation.

Assignment of Errors.

The National Council, Jr. O. U. A. M. of North America, a Corporation; E. L. S. Bouton, James R. Mansfield, E. H. Heaton, George D. Sprow, Jr., J. E. Boehm, O. B. Hopkins, James S. Groves, E. R. Boyer, C. P. Blunt, W. J. Gibson, J. R. Jewell, B. B. Bott and J. R. N. Curtin, plaintiffs in error come and file herewith their petition for a writ of error, and say that there are errors in the record and proceedings of the above entitled cause, and make the following assignments of error.

The Supreme Court of Appeals of Virginia erred in affirming the decree of the Chancery Court of the City of Richmond after amending the same as set forth in the decree of the said Supreme Court of Appeals of Virginia, contained in the record hereto attached; and in holding the Act of Assembly of the State of Virginia, entitled "An Act to incorporate the State Council of Virginia, Junior Order of United American Mechanics of the State of Virginia," found in session Acts of Virginia 1899-1900, p. 404-405, to be constitutional and valid. The validity of the said Act was denied and
209 drawn in question by the plaintiffs in error on the ground of its being repugnant to the Constitution of the United States, and in contravention thereof.

The said errors are more particularly set forth, as follows:

The Supreme Court of Appeals of Virginia erred in holding and deciding:

First. That said act, in incorporating the defendant in error and granting it the powers therein contained, was not an impairment of the obligation imposed by the contract, existing between the defendant in error and the plaintiffs in error, and was not in violation of Article I, section 10, paragraph 1, of the Constitution of the United States, but was valid.

Second. That said Act in incorporating the defendant in error and granting it the powers therein contained, did not deprive the plaintiffs in error or any one of them, of liberty or property without due process of law, and did not deprive the plaintiffs in error or any one of them within the jurisdiction of the State of Virginia of the equal protection of the laws, and was not in violation of section 1 of the 14th Amendment of the Constitution of the United States.

Third. In holding that, under and by reason of the aforesaid

statute of Virginia, the defendant in error is the Supreme Head of the Junior Order of the United American Mechanics in the State of Virginia and as such has and shall have, in the State of Virginia, full and exclusive authority and jurisdiction to grant charters to subordinate councils, Junior Order United American Mechanics in the State of Virginia, with power to revoke the same for cause, and to make such constitutions, by-laws and rules of the order as it may deem just and proper for the government of subordinate councils.

210 Fourth. In decreeing that, by reason of and under the aforesaid statute of Virginia, the plaintiffs in error, jointly and severally be perpetually enjoined and restrained from continuing the use within the State of Virginia of the name of the State Council of Virginia, Junior Order United American Mechanics of the State of Virginia, or any other name of like import likely to be taken for that of plaintiff; and from the use of the seal of said plaintiff within the State of Virginia; and from carrying out, within the State of Virginia, under the name of the plaintiff, or any name of like import, any of the objects for which the said National Council of the Junior Order of United American Mechanics of the United States of North America, or the said voluntary association organized on or about March 2nd, 1901, as aforesaid, were organized; and from using within the State of Virginia the name of the said plaintiff or any other name of like import in the pursuit of the objects for which the said plaintiff was chartered; and that all and any of said defendants, under the name of plaintiff, or any other name of like import, be enjoined from granting Charters to subordinate Councils within the State of Virginia, and from representing themselves to subordinate Councils within the State of Virginia as the head of the said Order in the said State of Virginia, and from interfering within the said State of Virginia, in any way with the pursuit by the said plaintiff of its objects and purposes within the State of Virginia; and that the said National Council of the Junior Order of United American Mechanics of the United States of North America, and the said voluntary associations organized on or about March 2nd, 1901, as aforesaid, and their agents and officers be, and they are hereby, *per-tually* enjoined and restrained from designating their officers within the State of Virginia by the appellations set forth in the bill used by the plaintiff for its officers and agents, and from continuing the use in the State of Virginia of said appellations."

211 Fifth. In refusing, by reason and because of the said statute of Virginia, to enjoin the said defendant in error from using the name under which it was chartered under said statute; from using the ritual of the National Council which the defendant in error was and is using; from withholding from the plaintiffs in error the State Council instituted as set forth in the Answer of the said National Council on the 2nd day of March 1901, all of the moneys, books and other property which belonged to the old State Council; from claiming and holding out to the world that it is the true state Council of Virginia, Jr. O. U. A. M.; from soliciting any person to become a member of any of the pretended councils of its pretended organization, or collecting any money or dues under any

claim or pretense that it was the true State Council of Virginia, Jr. O. U. A. M.

For which errors the plaintiffs in error, the National Council, Junior Order United American Mechanics, a corporation, E. L. Bouton, James R. Mansfield, E. H. Heaton, George B. Sprow, Jr., J. E. Boehm, O. B. Hopkins, James S. Groves, E. R. Boyer, C. P. Blunt, W. J. Gibson, J. R. Jewell, B. B. Bott and J. R. N. Curtin, pray that the decree of the Supreme Court of Appeals of Virginia, dated June 16, 1905, amending and affirming the decree of the Chancery Court of Richmond, be reversed, and proper relief be granted to plaintiffs in error, and for costs.

ELLIS G. KINKEAD,
C. V. MEREDITH,

Counsel for The National Council, Junior Order United American Mechanics of North America, a Corporation; E. L. S. Bouton, James R. Mansfield, E. H. Heaton, George B. Sprow, Jr., J. E. Boehm, O. B. Hopkins, James S. Groves, E. R. Boyer, C. P. Blunt, W. J. Gibson, J. W. Jewell, B. B. Bott, and J. R. N. Curtin.

212 The Honorable James Keith, President Supreme Court of Appeals of Virginia.

NATIONAL COUNCIL, JR. O. U. A. M. OF NORTH AMERICA, a Corporation; E. L. S. BOUTON, JAMES R. MANSFIELD, E. H. HEATON, GEORGE B. SPROW, JR., J. E. BOEHM, O. B. HOPKINS, JAMES S. GROVES, E. R. BOYER, C. P. BLUNT, W. J. GIBSON, J. R. JEWELL, B. B. BOTT, and J. R. N. CURTIN

vs.

THE STATE COUNCIL OF VIRGINIA, JR. O. U. A. MECHANICS OF THE STATE OF VIRGINIA, a Corporation.

Petition.

The National Council, Junior Order United American Mechanics, of North America, a corporation, E. L. Bouton, James R. Mansfield, E. H. Heaton, George B. Sprow, Jr., J. E. Boehm, O. B. Hopkins, James S. Groves, E. R. Boyer, C. P. Blunt, W. J. Gibson, J. W. Jewell, B. B. Bott and J. R. N. Curtin, considering themselves aggrieved by the final decision of the Supreme Court of Appeals of Virginia, rendered on the 16th day of June, 1905, in this cause in affirming, after amendment thereof, the decree of the Chancery Court of the City of Richmond hereby prays the allowance of a writ of error returnable into the Supreme Court of the United States, and for citation and supersedeas. Assignment of errors is hereto attached.

ELLIS G. KINKEAD,
C. V. MEREDITH,

Counsel for The National Council, Junior Order United American Mechanics of North America, a Corporation; E. L. S. Bouton, James R. Mansfield, E. H. Heaton, George B. Sprow, Jr., J. E. Boehm, O. B. Hopkins, James S. Groves, E. R. Boyer, C. P. Blunt, W. J. Gibson, J. W. Jewell, B. B. Bott and J. R. N. Curtin, Petitioners.

213 STATE OF VIRGINIA, *Supreme Court of Appeals, ss:*

Let the writ of error issue upon the execution of a bond by the plaintiffs, The National Council Junior Order United American Mechanics of North America, a corporation, *et als,* to the defendant, State Council of Virginia, Junior Order United American Mechanics of the State of Virginia, a corporation, in the sum of Three Hundred Dollars ($300.00); said bond when approved to act as a supersedeas.

Dated July 6th, 1905.

JAMES KEITH,
President of the Supreme Court of Appeals of Virginia.

214 In the Supreme Court of the United States.

THE NATIONAL COUNCIL JUNIOR ORDER UNITED AMERICAN MECHANICS OF NORTH AMERICA, a Corporation; E. L. S. BOUTON, JAMES R. MANSFIELD, E. H. HEATON, GEORGE B. SPROW, J. E. BOEHM, O. B. HOPKINS, JAMES S. GROVES, E. R. BOYER, C. P. BLUNT, W. J. GIBSON, J. W. JEWELL, B. B. BOTT and J. R. N. CURTIN,

versus

THE STATE COUNCIL OF VIRGINIA, JR. O. U. A. MECHANICS OF THE STATE OF VIRGINIA, a Corporation.

Bond.

Know all men by these presents, that we, O. B. Hopkins, as principal, and Henry Shirey, as surety, are held and firmly bound unto of the Commonwealth of Virginia in the sum of three hundred dollars to be paid to the said State Council of Virginia, Junior Order United American Mechanics of the State of Virginia, a corporation, to which payment, well and truly to be made, we bind ourselves jointly and severally firmly by these presents.

Sealed with our seals and dated this 6th day of July, 1905.

Whereas, the above named plaintiffs in error seek to prosecute its writ of error to the Supreme Court of the United States to reverse the decree rendered in the above entitled cause by the Supreme Court of Appeals of Virginia:

Now, therefore, The condition of this obligation is such that if the above named plaintiffs in error shall prosecute its said writ of error to effect, and answer all costs and damages that may be adjudged if it shall fail to make good its plea, then this obligation to be void, otherwise to remain in full force and effect.

O. B. HOPKINS. [SEAL.]
HENRY SHIREY. [SEAL.]

STATE OF VIRGINIA, *City of Richmond:*

I, J. Harrison Tabb, a Notary Public in and for the City aforesaid, do certify that O. B. Hopkins and Henry Shirey per-
215 sonally appear before me in my City aforesaid on the 6th day of July 1905, and respectively acknowledged his

signature to the above bond, and being sworn, stated that each one of them was worth the sum of three hundred dollars after payment of all debts due by each respectively.

Given under my hand this 6th day of July, 1905.

J. HARRISON TABB,
Notary Public.

My Commission expires May 10th, 1909.

The foregoing bond is approved.

JAMES KEITH,
President of the Supreme Court of Appeals of Virginia.

The original of the foregoing supersedeas bond was lodged with the clerk of the supreme court of appeals of Virginia on July 8th, 1905, and the following endorsement made thereon: Bond. Filed July 8th, 1905.

H. STEWART JONES,
Clerk Supreme Court of Appeals of Virginia.

[Endorsed:] Bond. Filed July 8, 1905.

216 UNITED STATES OF AMERICA, *ss:*

The President of the United States to The Honorable, The Supreme Court of Appeals of Virginia, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in said Supreme Court of Appeals of Virginia before you, at the June term, 1905, thereof, between The National Council, Junior Order United American Mechanics of North America, a corporation, E. L. S. Bouton, James R. Mansfield, E. H. Heaton, George B. Sprow, Jr., J. E. Boehm, O. B. Hopkins, James S. Groves, E. R. Boyer, C. P. Blunt, W. J. Gibson, J. R. Jewell, B. B. Bott and J. R. N. Curtin, plaintiffs in error, and The State Council of Virginia, Junior Order United American Mechanics of the State of Virginia, a corporation, defendant in error, a manifest error has happened to the great damage of the said plaintiffs in error, as by their complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within thirty days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the law and customs of the United States should be done.

Witness, the Honorable Melville W. Fuller, Chief Justice of the

United States, the tenth day of July, in the year of our
217 Lord one thousand nine hundred and five.

[Seal United States Circuit Court, Eastern District of Virginia.]

JOSEPH I. BRADY,
Clerk of the Circuit Court of the United States for the Eastern District of Virginia.

Allowed.
JAMES KEITH,
President of the Supreme Court of Appeals of Virginia.

[Endorsed:] National Council Jr. O. U. A. M. *et als. v.* State Council Jr. O. U. A. M. Writ of error. Filed July 10, 1905.

218 The original of the foregoing writ of error was lodged with the clerk of the supreme court of appeals of Virginia on the 10th day of July, 1905, and also at the same time and place a copy thereof for the defendant, The State Council of Virginia, Junior Order United American Mechanics of the State of Virginia. The following endorsement was made upon the said original writ and upon the copy: Writ of error. Filed July 10th, 1905.

H. STEWART JONES,
Clerk Supreme Court of Appeals of Virginia.

219 UNITED STATES OF AMERICA, *ss:*

The President of the United States to The State Council of Virginia, Junior Order United American Mechanics of the State of Virginia, a corporation, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to a writ of error, filed in the Clerk's Office of the Supreme Court of Appeals of Virginia, wherein The National Council Junior Order United American Mechanics of North America, a corporation, E. L. S. Bouton, James R. Mansfield, E. H. Heaton, George B. Sprow, Jr., J. E. Boehm, O. B. Hopkins, James S. Groves, E. R. Boyer, C. P. Blunt, W. J. Gibson, J. W. Jewell, B. B. Bott and J. R. N. Curtin, are plaintiffs in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiffs in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the President of the Supreme Court of Appeals of Virginia, this 10th day of July, in the year of our Lord one thousand nine hundred and five.

JAMES KEITH, [SEAL.]
President of the Supreme Court of Appeals of Virginia.

Attest:
H. STEWART JONES,
Clerk Supreme Court of Appeals of Virginia.

Service accepted July 10th, 1905.

SAMUEL A. ANDERSON,
Counsel for the State Council J. O. U. A. M., the Defendant in Error.

220 *Return to Writ.*

UNITED STATES OF AMERICA,
Supreme Court of Appeals of Virginia, ss:

In obedience to the commands of the within writ, I herewith transmit to the Supreme Court of the United States a duly certified transcript of the complete record and proceedings in the within entitled case, with all things concerning the same.

In witness whereof, I hereunto subscribe my name and affix the seal of said supreme court of appeals, in the city of Richmond, this 10th. day of July, 1905.

[Seal Supreme Court of Appeals of Virginia, Richmond.]

H. STEWART JONES,
Clerk Supreme Court of Appeals of Virginia, at Richmond.

Endorsed on cover: File No. 19,859. Virginia Supreme Court of Appeals. Term No. 357. The National Council, Junior Order United American Mechanics of North America *et al.*, Plaintiffs in Error, *vs.* The State Council of Virginia, Junior Order United American Mechanics of the State of Virginia. Filed July 26th. 1905. File No. 19,859.

FILED OCT 22 1906
JAMES H. McKENNEY, CLERK

(19,859)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1906.

No. 89.

THE NATIONAL COUNCIL, JUNIOR ORDER UNITED AMERICAN MECHANICS OF NORTH AMERICA, ET AL., PLAINTIFFS IN ERROR,

vs.

THE STATE COUNCIL OF VIRGINIA, JUNIOR ORDER UNITED AMERICAN MECHANICS OF THE STATE OF VIRGINIA, DEFENDANTS IN ERROR.

IN ERROR TO THE SUPREME COURT OF APPEALS OF THE STATE OF VIRGINIA.

BRIEF FOR PLAINTIFFS IN ERROR.

SMITH W. BENNETT,
C. V. MEREDITH,
ELLIS G. KINKEAD,
Attorneys for Plaintiffs in Error.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1906.

No. 89.

THE NATIONAL COUNCIL, JUNIOR ORDER UNITED AMERICAN MECHANICS OF NORTH AMERICA, ET AL., PLAINTIFFS IN ERROR,

vs.

THE STATE COUNCIL OF VIRGINIA, JUNIOR ORDER UNITED AMERICAN MECHANICS OF THE STATE OF VIRGINIA, DEFENDANTS IN ERROR.

BRIEF FOR PLAINTIFFS IN ERROR

This litigation began in the Chancery Court of Richmond, Virginia. The plaintiffs in error here were the respondents in the trial court, and the defendants in error were the complainants in the suit.

The plaintiffs in error are the National Council of the Junior Order United American Mechanics, a corporation chartered under the laws of Pennsylvania, and the individuals named in the bill of complaint, and "others to your orator

unknown," as alleged in said bill. Of those individuals specially named, all, except three or four, were described in said bill as officers of a certain voluntary association, existing in Virginia under the name of "the State Council of Virginia, Junior Order United American Mechanics." All of said individuals, as well as those described as "unknown," were members of said voluntary association, created under a social or contractural charter conferred by the said National Council.

By its charter, granted by the State of Pennsylvania in 1893, the National Council became a legal corporation and was declared to be "the Supreme head of the order in the United States of America," and was admitted by all so to be, until the defendant in error on February 17th, 1900, was incorporated by a statute of the State of Virginia under the same name and title as that used for several years by said voluntary association.

This litigation arose out of a revolt against the National Council by those comprising the defendant in error.

The circumstances leading to such revolt are found in the record, especially in the bill of complaint, the answers, and the "Agreed Facts." Pp. 54-104-128 and 136. Many of them, while of importance in the state courts, are immaterial to the questions to be considered by this tribunal. The following facts are those bearing upon the questions here at issue.

In 1869 there were three State Councils of the Order, one in Pennsylvania, one in Delaware and one in New Jersey. These three State Councils in that year created a National Council, and agreed as to what should then be the powers of the said National Council, which was formed in accordance with said agreement. Thereupon the said three State Councils surrendered and abandoned their independent existence and powers and took charters for themselves respectively from the said National Council, and recognized that they existed and exercised all their subsequent powers under the charters given by said National Council. At that time there was no State Council, nor were there any subordinate councils in Virginia. After that date and prior to 1893 charters were granted by

said National Council to subordinate Councils in many other states, and also to the State Council of Virginia. Under and by reason of the charter then obtained the State Council of Virginia derived all the powers, which it had claimed and exercised until the present controversy arose. Agreed Facts, p. 131.

The charter granted by the State of Pennsylvania is found on p. 65. It declared "the National Council of the Junior Order of United American Mechanics, the supreme head of the Order in the United States of North America, which has been organized for the beneficial and protective purposes, and among other things, for the advancement of the following objects, viz:

First—To maintain and promote the interests of Americans and shield them from the depressing effects of foreign competition.

Second—To assist Americans in obtaining employment.

Third—To encourage Americans in business.

Fourth—To establish a sick and funeral fund.

Fifth—To maintain the public school system of the United States of America and to prevent sectarian interference therewith and to uphold the reading of the Holy Bible therein."

In June, 1894, the National Council met in Asheville, Kentucky, and adopted a Declaration of Principles, a Constitution of the National Council, and certain "General Laws for the Government of the Order and Observance of State and Subordinate Councils." See p. 67 to 83.

In the Declaration of Principles the Order declared its views upon the question of immigration, its "devotion to the public school system," its belief in compulsory education, in the separation of Church and State, in the reading of the Bible in the public schools, and in cultivating a love for the National Flag.

It also declared "In the strictest sense we are a National political organization, but we oppose with unanimity the slightest taint of partisanship." pp. 67-68.

The record shows that this last declaration is true. The prime object of the existence of the order is the successful main-

tenance of certain governmental principles. In this it presents a wide difference between itself and other fraternal, or benevolent or beneficial organizations. Its separation from an ordinary business corporation is still more marked.

The said Constitution (See p. 70 to 83), remained unaltered except in one respect, immaterial to the questions here at issue, until the annual meeting of the National Council held at Minneapolis in 1899. Five years had elapsed since the last general revision of the Constitution, as contemplated by section 1, Article 25 of the said Asheville Constitution. Agreed fact No. 21, p. 133. That Constitution had been referred at the previous annual meeting to a Committee on Revision as contemplated by Section 2, Article 25 thereof. Agreed Fact No. 19, p. 133.

After the adoption of the Minneapolis Constitution certain members of the order residing in Virginia, insisted that the same had been improperly adopted, and contained certain provisions which they claimed were illegal and void. These members, constituting a majority of the then State Council of Virginia, which had received its contractural charter from the National Council, and existed by virtue thereof, prevented the said State Council from recognizing and obeying the orders and requirements of the Supreme head of the Order, the said National Council. See Agreed Fact No. 14, p. 132. Some efforts at an adjustment of the complaints were made at the annual meeting of the National Council in Philadelphia in 1900, but met with no success. Agreed Facts No. 25 and 26, p. 134.

A short time after said annual meeting, about February 17, 1900, some of said dissatisfied members obtained from the Legislature of Virginia a statutory charter, creating an organization under the name of the "State Council of Virginia, Junior Order of the United American Mechanics of the State of Virginia," being the exact title by which the voluntary association created by a contractural charter from said National Council, and then existing in Virginia was styled and known.

The said alleged grounds of dissatisfaction and charges of

illegal provisions in the Minneapolis Constitution are immaterial to the question here at issue, but they are fully replied to and met in the answers of the plaintiffs in error, pp. 104 to 116, and in the petition for an appeal to the Supreme Court of Appeals of Virginia, pp. 17-21. The validity of the Minneapolis Constitution has been passed upon favorably by the Supreme Court of Pennsylvania, under the laws of which state the National Council was created, and in which it exists. See Derry Council, etc., vs. State, 197 Pa., p. 413; approved in Head Camp, etc., vs. Woods, 81 Pacific Rep. 261.

After the said statutory charter had been granted to the defendant in error, the then existing State Council met on March 14, 1900, and to it was submitted said charter for acceptance or rejection, p. 123. The vote on the question of acceptance stood: Yeas, 86; Nays, 17. See p. 124.

The State Council of Virginia, claiming to act under said statutory charter, met in October, 1900, to adopt its own Constitution. At that meeting it adopted substantially the Declaration of Principles adopted by the National Council at Asheville, and reaffirmed at Minneapolis, except that it omitted the words, "In the strictest sense we are a national political organization, but we oppose with unanimity the slightest taint of partisanship." See Mem. p. 124.

At that meeting an effort was made to declare that the State Council was a part of the National Order, but the effort failed by a vote of Ayes 32, nays 87. But a declaration was carried, declaring the State Council to be "the Supreme head of the Order," p. 125.

That body organized claiming to be the successor to the State Council which had previously existed under the charter from the National Council. See Bill of Complaint, pp. 54, 60, 61. It adopted the same offices and titles, used under the old State Council charter, and also adopted virtually the same ritual. Agreed Fact No. 10, p. 131.

The State Council thus positively severed its connection with the National Order. Smith et al vs. Same, 3 Desau., p. 581. Seeing that it had thus set itself up as an independent

order, the National Judiciary summoned it to appear on January 10, 1901, and relieve itself of its acts of insubordination, or that the contractural charter to State Council theretofore granted by the National Council should stand revoked. It failed to appear, and a decree of revocation was entered. Ex G. p. 119. Agreed Fact No. 29, p. 135.

During these troubles there had remained in Virginia, faithful to the National Council and the National Order, 24 out of 147 Councils, (p. 137), and 3,540 members out of about 14,000, p. 133.

The National Council, although revoking the old State Council charter, recognized as existing and operative the subordinate Councils, which still recognized, as existing and binding, the Constitution and General Laws adopted at the Minneapolis session, and which refused to participate in the acts deemed insubordinate by the National Judiciary, and attempted to prevent the same, and which refused to become a part of the body organized under the charter granted by the Legislature of Virginia, but continued a part of the National Order. The subordinate councils, so refusing, petitioned the present National Council for a State Council charter, and for their embodiment and association under the name of and as the State Council of Virginia, Jr. O. U. A. M., the title and name which the National Council had always bestowed upon the association of the subordinate councils in this state. In accordance with this petition the National Council created a State Council under such name and title on March 2, 1901, and gave it all the rights, powers and privileges that had been previously granted to the old State Council. Agreed Fact No. 29, p. 135. Under such powers a State Council was organized, with the individual plaintiffs in error as the officers thereof. pp. 61 and 114. Thus was preserved to the faithful subordinate councils the State Council, with its powers, its name, and its seal and ritual. Smith et al v. Same, and Polar Star Lodge vs. Same, 16 La. Ann., pp. 53-76.

To clearly understand the questions here at issue it is necessary to know the composition of the Order, its constituent parts

and their relation to each other.

The Order is constituted as follows:—

1st: A National Council.

2nd: State Councils, working under charters or warrants granted, and not suspended or revoked.

3rd: Councils, working under charters or warrants granted, and not suspended or revoked." p. 90.

First—The National Council is the corporation chartered as above stated under the laws of Pennsylvania, and is the Supreme Legislative, Judicial and Executive head of the Order, p. 92. Membership to it is restricted, not as to numbers, but as to the classes of persons who are eligible. They consist of the Past officers, members of certain committees, "three Representatives from each State Council, with one additional Representative for every ten thousand members or majority fraction thereof, and one Representative from each state under the jurisdiction of the National Council wherein there are at least four councils in good standing." p. 92.

The representatives from a State Council are chosen by the State Council; while the "Representative to the National Council, from a state under the jurisdiction of the National Council, shall be chosen annually, and in such manner as may be prescribed by law." p. 92.

Among its powers is to "grant charters to State Councils, and to provide by law for the issue, revocation, suspension, restoration and re-issue of such charters," p. 94.

Second—The State Councils, which cannot "be instituted with less than five councils, each acting under a warrant or charter," p. 98. There can only be one State Council in a State. p. 99. Each State Council has power to frame a Constitution for its own government and enact laws in conformity therewith for the government of councils and members, provided they be not in conflict with the Supreme Law, p. 99. "A State Council may provide by law that the Councils within its jurisdiction shall or shall not, pay weekly benefits, and fix the amount thereof, or the determination of this question may be left to the Councils." p. 100.

Third—Councils. They are the local or subordinate councils or associations. When there is a State Council in a State, it has power to grant charters to subordinate councils. Section 12, p. 94. Such a council must consist of not less than ten members, p. 100. Each council shall provide for and pay upon the death of a member, not honorary thereof, in good standing a funeral benefit of not less than twenty dollars, p. 101.

All members of the Order enter through the subordinate councils. They support the entire Order, including State Councils and the National Council. They are the only bodies of the Order that pay either sick or death benefits or bury deceased members. Agreed fact, No. 12, p. 131.

Soon after the National Council issued the charter to the loyal State Council, formed out of the loyal subordinate councils, the statutory State Council, the defendant in error, instituted this litigation. See Bill of Complaint, pp. 54-63.

In its said Bill of Complaint it set forth its objections to the Minneapolis Constitution and the creation by the National Council of the loyal State Council. It alleged that the attempted creation of said loyal new State Council by the National Council was in violation of its statutory rights and void, and that the name so given to and used by the loyal State Council was the same as that under which it had been chartered by the Virginia Legislature, and that the use of such name interfered with its rights. It claimed to be under its statutory charter the supreme head of the Junior Order of United American Mechanics in the State of Virginia.

It is claimed that under its charter it has been given "full and exclusive authority and jurisdiction to grant charters to subordinate councils," etc., and that in violation of such power the loyal State Council was creating and granting charters to subordinate councils. See its charter, p. 64.

In the prayer of its bill, it asked that the plaintiffs in error might be made parties defendant and required to answer. It also prayed, as follows: "May your honor declare the said organization, the new State Council, to be illegal, and your

orators' charter to be valid; may said defendants be enjoined from continuing the use of the name 'State Council of Virginia, Junior Order United American Mechanics of the State of Virginia,' or any other name of like import, likely to be taken for that of your orator, and from the use of the seal, and from carrying out the objects for which they were organized; and from using the name of your orator, or any other name of like import, in pursuit of any of the objects for which your orator was chartered. May said defendants, under the name of your orator, or any name of like import, be enjoined from granting charters to subordinate councils, and then representing themselves to subordinate councils as the head of the Order in this State, and from interfering in any way with the pursuit by your orator of its objects and purposes. May they be restrained from designating their officers by the appellations above set forth as those used by your orator for its officers or agents. May those already elected, as above stated, be restrained from using the aforesaid appellations," etc., etc.

The plaintiffs in error, as respondents to said bill, filed separate answers; although all the individuals adopted the answer filed by the National Council, pp. 104 to 117.

In said answer of the National Council it is insisted that the objections to the Minneapolis Constitution are without merit, that the said Constitution was properly adopted and is binding upon the Order throughout the United States, that the State Council had recognized said Constitution since its adoption. It set up the revolt of those siding with and comprising the defendant in error, and set forth its acts of insubordination and of its setting up itself as an independent organization, free from all connection with the National Order, by the obtaining of the statutory charter and claiming to exist thereunder as the supreme head of the Order in Virginia.

It admitted the creation by the National Council of the new State Council at Alexandria, out of the subordinate councils, who remained loyal to the National Council, after the old State Charter had been revoked by the National Judiciary, because of such acts of insubordination and voluntary with-

drawal from the Order; that in creating such new State Council, it used the name which had been previously received by the old State Council from the National Council and used by it for several years. It alleged that the right to use said name or title is one of the rights belonging to the National Council, or Order, and which has belonged to it for a number of years, and which can only be used by such organization as shall be created and authorized by the National Council. It also alleged that the acceptance of the charter by the old State Council, by which it agreed to be a part of the National Order, to be subject to the National Council, and the constitution adopted by it, made a contract between the National Council and the old State Council and those composing it. It then alleged that by obtaining said statutory charter with the powers therein contained it broke said contract.

It alleged that the said illegal and wrongful acts of the defendant in error were "not only in violation of its contract with and obligation to the National Council, but also in violation of the rights of the minority members of the old State Council and the many subordinate councils who refused to participate in any of said acts of insubordination, but continued to recognize the supremacy of the National Council and their connection therewith."

The National Council in said answer further insisted "that the Act of Assembly incorporating the complainant was an impairment of the obligation imposed by the contract existing between the complainant and your respondent, the National Council, in violation of Article 1, sec. X, par. 1, United States Constitution, and therefore null and void."

It also alleged "That the said Act of Assembly is also in violation of Section 1 of the 14th amendment of the United States Constitution, which reads, 'nor shall any State deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.'" It further alleged that the defendant in error, "by using the name, which it has wrongfully usurped, as above set forth, is attempting to collect and is collecting

money to which the State Council, represented by your respondents, as above stated, is entitled and would be paid to said State Council, except for the insubordination and wrongful acts of the complainant as above set forth."

This allegation was admitted in the trial court by the defendant in error. In Agreed Fact No. 11, p. 131, "It is admitted that if the plaintiff is entitled to the rights asserted in the bill the acts of the defendant interfere with and impair those rights, and it is also admitted that if the defendants are entitled to the rights asserted in the answer, the acts of the plaintiff interfere with and impair those rights."

And in Agreed Fact No. 9, p. 131, "It is agreed that both the plaintiff and defendant State Councils have granted and intend to grant charters to the subordinate councils in the State of Virginia and the City of Richmond; that each, by their organization and existence, are obtaining members and membership fees and dues, which one would obtain and receive but for the existence of the other, and that both the complainant State Council and the defendant State Council are respectively claiming to the outside world that it is the only true and lawful State Council of Virginia, Jr. O. U. A. M." The plaintiffs in error prayed that their answers might be treated as cross bills, and that they might have the following relief: that the said Statute of Virginia creating said complainant might be declared unconstitutional and void, that said complainant might be enjoined from using its name, from using the ritual of the National Council, from withholding money, books or property of the Order, from holding itself out as the true State Council, from soliciting any person to become a member of any of the pretended councils of its pretended organization, or collecting money or dues under the claim that it is the true State Council.

The plaintiff in error introduced in the trial court as a part of its evidence, a Statute of Virginia, enacted in 1898. See p. 127. Its title reads "An Act to Define and Regulate Fraternal Beneficiary Associations, Orders or Societies." It provides, "Any fraternal beneficiary order, association, or so-

ciety of this or any other state, district, province or territory, now having members, or any lodge, chapter, council or subordinate branch duly established and organized in this State, may continue its operations and business in this State: provided, that it hereafter complies with the provisions of this act," etc., etc.

The act then makes certain requirements. It then further reads, "All laws or parts of laws in conflict with or inconsistent with this act be, and the same are hereby repealed, and nothing in this act shall be held to affect or to apply to grand or subordinate lodges of Masons, Knights of Pythias, Odd Fellows, Red Men, Junior Order United American Mechanics, or similar orders that do not have as their principal object the issuance of benefit certificates to members."

By that act the Junior Order United American Mechanics, both as to its "grand and subordinate lodges," was recognized as lawfully existing and operating in Virginia along with the other Orders named, and being expressly exempted from the operation of the Statutes, it was tacitly at least invited to remain in the State, freed from the requirements imposed upon organizations not mentioned in the Statute.

It was agreed that the other Orders specifically named in the statute still existed in Virginia, but that the State had never passed as to any one of such fraternal Orders, a statute similar to the Act of Feb. 17, 1900, under which the defendant claims its creation and its powers.

The plaintiff in error also introduced below an act incorporating "the Trustees of Lovettsville Council, No. 101, Jr. O. U. A. M. of Lovettsville, Virginia," pp. 126-127. They were empowered to receive or otherwise acquire property "for the use of the said council of Junior Order of United American Mechanics." It further provided, "Whenever the said Council shall surrender its charter to the State Council of Virginia, or from any other cause cease to exist, the said trustees, or a majority of them, shall have the authority to sell and convey the land and other property held by them for the use of said Council, and distribute the money belonging to said Council

ratably among the members in good standing at the time of such surrender of charter, subject to the action of the State Council."

It was agreed as a fact, "That the said Lovettsville Council was still in existence, had refused to join the complainant, and now forms a part of the defendant State Council," p. 137.

Decree.

Upon the final hearing the trial court entered a decree in favor of the defendant in error, pp. 138-9. It declined to pass upon the question as to the validity of the Minneapolis Constitution, or the effect of the revolt of those comprising the complainant below, but based its decree entirely upon the ground that the Statute of Virginia, incorporating the said complainant below with the rights and powers therein given, was a constitutional and valid act. It held that under said statute the said complainant was made the supreme head of the Junior Order United American Mechanics in Virginia, with full and exclusive authority and jurisdiction to grant charters to subordinate councils, and that the complainant only was entitled to use the name, "State Council of Virginia, Junior Order United American Mechanics in the State of Virginia."

It held that by reason of the rights given in said statute it enjoined the plaintiffs in error "from the use within the State of Virginia of the name of the State Council of Virginia, Junior Order United American Mechanics of the State of Virginia, or any other name of like import likely to be taken for that of plaintiff and from the use of the seal of said plaintiff within the State of Virginia; and from carrying out within the State of Virginia, under the name of the plaintiff, or any name of like import, any of the objects for which the said National Council of the Junior Order of United American Mechanics of the United States of North America, or the said voluntary association organized on or about March 2d, 1901, as aforesaid, were organized; and from using within the State of Virginia the name of the said plaintiff or any other name of like import in the pursuit of the objects for which the said plaintiff was chartered; and that all and any of the said de-

fendants, under the name of plaintiff, or any other name of like import, be enjoined from granting charters to subordinate councils within the State of Virginia, and from representing themselves to subordinate councils within the State of Virginia, and from interfering within the said State of Virginia, in any way with the pursuit by the plaintiff of its objects and purposes within the State of Virginia; and that the said National Council of the Junior Order of United American Mechanics of the United States of North America, and the said voluntary association organized on or about March 2d, 1901, as aforesaid, and their agents and officers be, and they are hereby, perpetually enjoined and restrained from designating their officers within the State of Virginia by the appellations set forth in the bill used by the plaintiff for its officers or agents, and from continuing the use in the State of Virginia of said appellations."

Such was the judicial construction by the trial court in Virginia of the Virginia Statute, by which the defendant claims to have been created, and under which it claims to exist, and from which it claims to have obtained supreme authority in Virginia.

Scope of Statute Creating the Defendant in Error.

It may be well to fully understand which rights and powers were given by this statute, as declared by the Virginia Court, so as to appreciate the full effect of said statute, and to what extent it interfered with the rights and interests previously belonging to and enjoyed by the plaintiffs in error.

1st. This statute undertook to take away from the National Council the right which had always previously belonged to it, of giving to one of the branches of the Order the name of the "State Council of Virginia, Junior Order United American Mechanics of Virginia," and undertook to bestow the exclusive right to such name upon an organization unfriendly and antagonistic to the National Council and the National Order.

2d. This statute undertook to take away its name from a voluntary association then existing in Virginia and composed of the citizens of that State and give it to another organization inimical to and destructive of said voluntary association.

3rd. It declared that the National Council should not have power to authorize any voluntary association in Virginia, composed of citizens of that State, and forbade such council saying you may become a part of us, as a subordinate council, lodge or branch.

4th. It declared that no voluntary body of citizens of Virginia should become a part of said National Council, but could only become a part of the defendant in error.

5th. It declared that the chartered body alone should have the right to authorize any subordinate council to be known as a part of the Junior Order United American Mechanics, although in reality it was not to belong to such Order, as a National Order.

6th. It forbade any member or citizen of the State from voluntarily becoming a subordinate council of the Order by the consent and authority of another voluntary association in the State and composed of its citizens.

7th. It took the form of seal belonging to a voluntary organization of the citizens of Virginia, and then existing in that State, and gave the sole right to use it to another organization.

8th. It took away from a voluntary organization of citizens of Virginia, and then existing in that State, the right it had had for several years to call its officers by certain appellations or titles, and gave such right exclusively to another organization.

Yet it was held by the trial court that such an act was constitutional and valid.

Questions at Issue.

From that decree the plaintiff in error took an appeal to the Supreme Court of Appeals of Virginia. In addition to many objections applicable to the jurisprudence of the State Courts, the plaintiff in error insisted that the said Statute of February 17, 1900, purporting to create the defendant in error as a corporation under the title of the "State Council of Virginia, Junior Order of United American Mechanics of the State of Virginia," with the powers given in said act, was

void, because it interfered with vested rights, and because it was in conflict with the provision of the Constitution of the United States prohibiting any State from passing any law impairing the obligation of a contract, and also with the provisions in the 14th amendment to said Constitution, which read, "nor shall any State deprive any person of life, liberty or property without due process of law ,nor deny to any person within its jurisdiction the equal protection of the laws. P. 46.

Opinion, Supreme Court of Virginia.

The Supreme Court, in its opinion (pp.148 to 154), declined to recognize, as requiring consideration, any question but the two constitutional ones above stated. The court said:

"The sufficiency of the motive inducing the plaintiff to apply for the charter is immaterial. It stands upon its charter rights and must prevail, unless the contention of the defendants, that it is repugnant to some provision of the constitution of the State or of the United States, can be maintained." p.150.

The decree of the lower court was affirmed in the following remarkable and confusing statement:

"We do not understand the decree complained of to interfere with any vested right of person or property, but in order to put the matter beyond the reach of controversy, we shall so amend the decree as to provide that nothing therein contained shall in any wise affect any such right as may have accrued prior to the 17th day of February, 1900, and as amended the decree complained of is affirmed." P. 154. See also the order on page 155.

To ascertain exactly what is meant by such an expression would require considerable, and we think, contradictory explanation. If it meant, by such indefinite statement of a modification, to remove the chance of any further objection upon the ground of the constitutional questions raised, it must in all justice result in a failure. A court cannot destroy constitutional rights by merely darkening the extent of the violation of such rights. A court cannot specifically grant unconstitutional and illegal relief, and then hide the wrong by saying "But whatever I have done that is unconstitutional and injurious, I

disclaim." Specific wrongs cannot be hidden by general denials. It is with the substance, not with the shadow, that appellate courts deal. In substance the Supreme Court of Virginia affirmed the decree of the lower court, and left that decree marred by whatever wrong was previously contained in it.

Two Important Facts Established by Supreme Court of Virginia.

There are two facts contended for in that court by the plaintiffs in error, which were recognized in that opinion as facts, though not allowed to have their due weight.

1. The first is, that the Order known as the Junior Order United American Mechanics, had not in any way been excluded by that statute from Virginia, and that the National Council, and all the subordinate councils, which had been invited to continue in the State under the Statute of Virginia, defining fraternal associations (pp. 127-8), still remained "within the jurisdiction" of the State. See pp. 36-51.

On pages 151-2 the court, speaking of the effect of the statute incorporating the defendant in error, says, "It does not undertake, as we construe it, to deal with vested rights. It interferes with no right of property. It leaves the whole order of things as it existed with respect to the society known as the Junior Order United American Mechanics unaffected, and all rights of persons and property which had been acquired under that organization undisturbed and unaffected, except that it declares that the corporation created by the act shall have full and exclusive authority and jurisdiction to grant charters to subordinate councils in the State of Virginia."

The only reasonable construction of that language of the court is, that it meant to say that the act did not intend in any way or to any extent to exclude the Order in any of its organizations from the State, but that the Legislature claimed the right, although the National Council remained "within the jurisdiction" of the State, to separate it from similar institutions and to say who should create its subordinate councils.

It is true that the court, later on in its opinion, does discuss the right of a State to exclude a corporation from its limits,

but it must be remembered that it was not then defining, as it was above, the scope of the act, but was attempting to uphold the claim of the legislature, that it could impose the ruinous provisions upon our existence. Its argument is, that as a State can exclude a corporation, it can make any terms it may choose upon its continuing to operate in a State. We are not at this point interested in the fallacy of this statement, which consists in making a claim that a State has the right to select one corporation, still allowed to remain within its jurisdiction, along with many others of a similar character, and impose upon it restrictions and limitations not imposed upon any of the other similar corporations.

What we are now noticing is the construction put upon the charter of the defendant in error; viz.: that it was not intended to exclude the Order to any extent from the State, although it was known to exist therein with its National or "grand" Council, and its various subordinate councils, including its State Council.

"It leaves the whole order of things as it existed with respect to the society known as the Junior Order United American Mechanics unaffected," etc., etc. Such is the construction put upon the Virginia Statute by the Supreme Court of that State, and it must be accepted. But it does not follow that this court shall accept the conclusion to which that court came; viz.: that the statute, in giving the exclusive right to the defendant in error to create subordinate councils, did not violate the constitutional rights of the plaintiff in error. The construction may be accepted, but the conclusion rejected. Mobile etc. vs. Tennessee, 153 U. S. 486-492.

The decision of the court that neither the National Council nor any other part of the Order, was intended to be excluded from the State, is plainly in accord with the Statute. The act does not say a word about the National Council, much less declare any purpose to drive it from the State. And surely so destructive a determination cannot be a matter of presumption, especially as that corporation had been by name invited to continue in the State and establish subordinate councils. It no

where intimates any purpose to abolish any then existing subordinate councils, and such an intention cannot be a matter of presumption, for those subordinate councils were voluntary associations, composed entirely of citizens and residents of that State.

It nowhere declares that those subordinate councils shall have no dealing or connection with the National Council, for it knew that such connection was necessary for the accomplishment of the purposes of their existence.

Leaving the Order thus intact to those extents, and continuing in the State of Virginia, the legislature attempted to take the name belonging to the loyal State Council and give it to some other body, and give to that other body the exclusive power in the future to create the subordinate councils.

2. The second fact is, that the court virtually declares that the interests or rights which the voluntary associations of said Order, existing in Virginia, known as the State Council and the subordinate councils, and which the individual members also have, are not merely of a social nature, but are actual "property rights."

This conclusion of the court was declared in a curious way in its effort to uphold the statute.

The plaintiffs in error had insisted in that court, that the obligations of the contracts, which existed between the National and the State and subordinate councils and the individuals comprising the same, had been violated by the statute granting the charter to the defendant in error, and was therefore void.

In its opinion, the court says, on page 154:

"On behalf of the appellee (the defendant in error here), it is claimed that the inhibition of the constitution of the United States apply to contracts which involve the rights of property. And thereupon counsel for the appellants seek to impale their adversary upon the horns of dilemma. If property rights are involved, the act of the legislature impairs a contract with respect to them, and is void; if property rights are not involved, then a court of equity has no jurisdiction, and appellee was wrongfully in court."

"Property rights may arise, indeed may have arisen under the charter granted by the legislature, and those rights are within the pale of the protection afforded by a court of equity. The exclusive authority to organize subordinate councils, to raise funds for the relief of members of the Order and their families in case of accident, sickness or death, to defray the expenses of their funerals, or such other cases of distress as shall be defined by the constitution, by-laws, rules and regulations of the corporation, do or may involve rights of property within the protection of a court of equity; but it does not follow that a state may not prohibit a foreign corporation from coming within its borders for such purpose."

Of course the last few words of the above extract are manifestly irrelevant to the question then under notice, which was whether the obligation of a contract had been violated. But the extract from the opinion is of importance in this, viz.: that it specifies certain rights and powers, which it declared are "property rights," of the defendant in error. It happens that under the charter from the National Council to the loyal State Council, and under the charters of the subordinate councils, the plaintiffs in error possessed exactly the same rights and powers. Of course if such rights and powers are "property rights" to the defendant in error, they are equally so to the plaintiffs in error. Hence we are right in saying that the contracts between the National Council, the State Council, the subordinate councils and the individuals composing the same, as contained in their respective charters, the constitution and the laws of the Order, are not mere social relations, but are contracts involving "property rights." It follows therefore that the contention of the defendant in error heretofore made that said contracts did not involve "property rights" cannot be of any avail, for the Supreme Court of Virginia, as above shown, declared otherwise.

There is no difference between the National Council and the defendant in error in the nature of their entities, they are both corporations. Hence whatever powers the defendant in error may have, which are in law "property rights," are equally

so when possessed by another corporation.

It is true that there is a difference in the characters of entity between the defendant in error and the new or loyal State Council. The former is a corporation, while the latter is a voluntary association. But that difference cannot change the effect of such powers and rights.

In the first place, the new State Council, so far as the Order was concerned, was but an agent or intermediary of the National Council.

Bankers Union vs. Nabors, 81 So. W. Report., 91.
Mitchell vs. Leech, 48 So. Eastern Report., 290.
Grand Lodge K. of P. vs. People, etc., 60 Ill. App. on p. 556.

It cannot be that any change can be wrought in the nature of those powers, by their being exercised by one of the constituent parts of the principal, or by an intermediary thereof. In the second place, rights and powers possessed by voluntary associations under the sanction of the law are just as much "property rights" as they are when belonging to and exercised by a corporation.

Grand Lodge vs. Graham, 31 L. R. A., on pp. 133-138.
Niblack Ben. Societies, sec. 90.
Otto vs. Tailors' etc. Union, 75 Cal., on p. 313.
Union Ben. Soc. vs. Martin, 67 So. W. Report., p. 38
Gorman vs. Russell, 14 Cal. 532-35.

As was said in Grand Lodge etc. vs. Gandy, 63 N. J. Eq. 692-96: "A contract entered into with a voluntary unincorporated association does not differ, in its essential nature, from one entered into with an incorporated body."

Other Important Facts Established by the Record.

In addition to these two important facts, which, as above stated, the Supreme Court of Virginia has established, it may be well to enumerate certain other facts established by the record.

1st. That the National Council is the corporation chartered under the name by the State of Pennsylvania. P. 65.

2d. The actual members of that corporation are compara-

tively few. They consist of certain past officers of the National Council and of the State Councils, and three representatives elected by each State Council, with an additional one for every ten thousand members or majority fraction thereof, or one representative from each state where there is no State Council, but as many as four subordinate councils. P. 92, sec. 1.

3d. The National Council represents not only itself as a corporation, but it represents the State and subordinate councils of this and the other states in the Union as their creator and as the ultimate preserver of their purposes and rights. It also represents to an equal extent each individual member of the subordinate councils of this and of the other states.

As was said in Gorman vs. Russell, 14 Cal. 532-534, "This is a voluntary association, formed for the benefit of the members of it."

4th. From the National Council all State Councils derived their existence as a part of the Order. They received from it knowledge of the secret ritual, the right to use the same, and use of the paraphernalia and state seal. That all such knowledge and power was received subject to the contract of submission to the National Council as contained in the constitution and general laws of the Order.

5th. That the State Council of Virginia, prior to the alleged incorporation of the defendant in error, was so created and empowered by the National Council.

6th. That the State Council of Virginia, prior to said incorporation, was a voluntary association of citizens or residents of Virginia, existing in Virginia. See admission in Bill of Complaint, pp. 54, 55, 60, 61.

7th. That it not only so existed as a Virginia association under the social charter from the National Council, but also under the invitation given by the State in its statute of March 3, 1898, sections 2 and 9, pp. 127-128, recognizing, as it does, not only the "fraternal beneficiary order," but also any "subordinate lodge."

State etc. vs. Vorys, 69 Ohio State, 56.

8th. That the legislature of Virginia has specifically recog-

nized the existence in Virginia of the State Council of the Order, as created by the National Council, and virtually assured its existence. See the charter granted to the subordinate council, named Lovettsville Council, No. 101, Jr. O. U. A. M., section 3, p. 127.

9th. That the other fraternal Orders specifically named in said statute "as the Masons, Knights of Pythias, Odd Fellows, Red Men," and other such Orders, "have had their grand and subordinate lodges in this State before, at the time of, and after the passage of the Act of Assembly relied upon by the complainant as incorporating it, and that the State has never passed any similar act as to any one of such Orders." P. 137.

10th. "That both the plaintiff and defendant State Councils have granted and intend to grant charters to subordinate councils in the State of Virginia and the City of Richmond; that each, by their organization and existence, are obtaining members and membership fees and dues, which one would obtain and receive but for the existence of the other, and that both the complainant State Council and the defendant State Council are respectively claiming to the outside world that it is the only true and lawful State Council of Virginia, Jr. O. U. A. M." P. 131.

11th. "It is admitted if plaintiff (the defendant in error) is entitled to the rights asserted in the bill the acts of the defendant (the plaintiffs in error) interfere with and impair those rights, and it is also admitted that if the defendants (the plaintiffs in error) are entitled to the rights asserted in the answer, the acts of the plaintiff (the defendant in error) interfere with and impair those rights." P. 131.

12th That when the State Council of Virginia met on March 14, 1900, the vote upon a motion to accept the legislative charter was yeas 86, nays 17. See p. 124. Although those who had obtained it without instructions from the State Council disclaimed any intention "to sever our connection with the said National Council." P. 122-124.

13th. That out of the membership of the Order in the State, comprising about 14,000 members, 3,540 refused to ac-

cept the charter granted by the legislature to the defendant in error, p. 133. And out of 146 subordinate councils, 24 councils so refused, and remained loyal to the National Council. P. 137.

14th. That it only required five councils in a state to entitle them to a State Council charter. Hence that said 24 loyal councils kept alive the right to a State Council charter and to the name belonging to such State Council, at the time the legislature of Virginia undertook to give said name and certain powers to defendant in error See

Smith et als vs. Smith et als, 3 Desau. 557-558.

Polar Star Lodge No. 1 vs. same, 16 La. Ann. 53-76.

Baker et al vs. Fales, 16 Mass. 488.

15th. That the National Council, recognizing the 24 loyal subordinate councils as entitled to said State charter, granted it to them under the name always previously used, and with the rights and powers authorized by the National Constitution; among which was the power to use the ritual and seal of the Order, and to create subordinate lodges in Virginia. pp. 61, 114, 135.

16th. That "All members of the Order enter through the subordinate councils. They support the entire Order, including State Councils and the National Council. They are the only bodies of the order that pay either sick or death benefits or bury deceased members." P. 131.

17th. That the power to say whether any weekly or sick benefits, and to fix the amount of them, rests with the State Councils, unless they shall authorize the subordinate councils to exercise their judgments in the matter. Sec. 14, p. 100

18th. That each subordinate council is obliged to provide for the payment to each active member in good standing, "a funeral benefit of not less than twenty dollars." P. 101, sec. 8.

19th. That the real parties in interest are the individual members of the Order. The corporation was not organized for money making purposes. All the money received is received from themselves, and disbursed amongst themselves, as above stated. The organization exists simply for the purpose of getting the strength that comes from numbers and for the purpose

of making the body national in its character, and by that means more surely accomplish the purposes of its existence. The Pennsylvania corporation, called the National Council, cannot so far as its existence in Virginia is concerned, be viewed as an ordinary business corporation. It has no existence in Virginia, except through the State Council and the subordinate councils, each of which is a voluntary association in Virginia composed of citizens of Virginia. All that the National Council does in Virginia is to recognize these voluntary Virginia associations as a part of the Order, give them appropriate names and rules of government. It is evident then that it is the individual members, citizens of Virginia, who are the real parties in interest.

20th. That the National Council was chartered and the National Council exists, for two purposes.

First—The minor one, for the fraternal benevolent purposes above mentioned.

Secondly—The main objects of its existence are the advancement of political, educational and moral principles. See charter, p. 65.

Its chief political principle is the passage of laws by the National Congress for the restriction of foreign immigration. See the first provision of its charter. In its declaration of principles it declares, "In the strictest sense we are a National political party." P. 67-68. The record shows that it is active in the advancement of that political principle. See pp. 140-1-2-3. Another of its political views is that there should be a statute passed by Congress to protect the American flag from insult. See p. 144. While still another endeavor is to prevent Congress from making appropriations to sectarian institutions. P. 144.

Its endeavor along educational lines was "to maintain the public school system of the United States of America and to prevent sectarian interference therewith." While its effort to advance morality consisted of its endeavor "to uphold the reading of the Holy Bible" in the public schools. See fifth article of its charter.

The past history of several of the States will show that

these were political principles requiring strenuous exertions to obtain success.

These being the main purposes of its existence, they make the corporation, which is the head of the Order, unique; and they should be remembered in passing upon the power of a State to declare that its citizens should not belong to such an Order, by forming themselves into voluntary associations as parts of said corporation.

21st. That the State, in chartering the defendant in error, has prohibited its citizens from further forming such voluntary associations for such purposes under the names used by the Order. For in the charter authorizing the defendant in error to use the name in controversy and to have exclusive right to create subordinate lodges under the name of the Order, it omitted from the objects of incorporation each and every one of the main objects of the National Order. See section 6, p. 64.

The statute, in effect, declares that citizens of Virginia shall not associate themselves together as local bodies, under the name used in all other parts of the Union, for the support and advancement of those governmental, educational and moral questions. Should its citizens become members of the defendant in error, they would not accomplish such a purpose or desire, for the defendant in error was not chartered for any of such objects. The effect of the statute is merely prohibitory.

It is in view of these facts established by the record, and those declared by the Supreme Court of Virginia as evolved out of the statute, that we contend that the said statute is void.

ARGUMENT.

I.

It was beyond the lawful power of the legislature of Virginia to take away the right of the National Council, the Pennsylvania corporation, to continue to control, and to use, through its subordinate body, the Virginia voluntary association, the title or name "State Council of Virginia, Junior Order United American Mechanics." This is true, no matter whether the Virginia Corporation is within the jurisdiction of the State of Virginia or without it.

The supposition or theory that the foreign corporation is not within the jurisdiction of Virginia cannot affect the question of the power of the legislature of that State. This foreign corporation is entitled to come into the courts of Virginia to protect its right to a name, and its other interests.

Bank of Augusta vs. Earle, 13 Peters, 519, 590-591.

If its name had been assumed by any other body of men, it would have had the right to obtain in the Virginia courts protection by injunction, or other proper remedy. If any body of men in Virginia should attempt to use the corporate name of the United States Steel Company or the American Tobacco Company, or that of any other foreign corporation it cannot be doubted but that the corporation whose name should be so used would be entitled to protection from the Virginia courts. If this be not true, then no corporate title in the United States is safe.

But it may be contended, as it was in the State courts, that while that may be true as to commercial corporations, where property or business interests are concerned, it is not true as to corporations like the National Council, which was not created and does not exist for such purpose, but mainly for intellectual or moral objects.

There is no real force in such a contention. In the first place, it is not strictly a fact that there are not business features connected with the existence of the National Council and the National Order. The existence of the National Council, or supreme head, is necessary for the successful existence of the State and subordinate councils, just as their existence is necessary for the continuance and maintenance of the National Council. They are interdependent upon each other. Through the charters granted by the National Council to the State and subordinate councils, the fraternal or beneficial features are exercised. It does involve then, to a certain extent, a business feature. This feature is not now, and cannot be, regarded by the courts as a matter of minor importance, but is held by the courts to be of so great importance and significance and benefit as deserving of watchful care and encouragement.

No court has more clearly announced this fact or more earnestly pointed out the duty of the courts, than the Supreme Court of Virginia. In Knights of Honor vs. Oeters, 95 Va. 610-615, the court said:

"The defendant corporation belongs to that class of organizations known as benefit societies. They are not organized for the purpose of making money, but for fraternal and benevolent objects. Their schemes of benevolence, by which they aim to provide benefits for their members in time of sickness, and indemnity to their families upon their death, can not be maintained unless the rules and regulations prescribed by their Constitution and By-Laws for the attainments of these objects are substantially upheld. This, it should be the policy of the law and the aim of the courts to do. Otherwise their schemes for furnishing to the working classes and men of moderate incomes a cheap and simple substitute for life insurance can not be accomplished.

Such a society is not a mere "benevolent society," where there is a benefit fund. State vs. Dunn, 134 N. C., 663-667.

Of such an organization, even when a voluntary association, it has been said "This is not a charity, any more than an assurance society against fire, or upon life, is a charity."

Gorman vs. Russell, 14 Cal. 532.
Otto vs. Tailors P. & P. Union, 75 Cal. 308-313.
Bauer vs. Samson Lodge, etc., 102 Ind. 262.
Dolan vs. Court Good Samaritan, 128 Mass. 437.
Lavalle vs. Societe, etc., 17 Rh. I. 680, 16 L. R. A. 392.
Blair vs. Supreme Council, etc., 208 Pa. 262-4-5.
Ludowiski vs. Benevolent Society, 29 Mo. App. 337-341.

In State vs. Georgia Med. Soc., 38 Ga. 608, the court speaking of the property existing in a franchise itself, says on p. 626.

"The property, which the corporation acquires, is not visible, tangible property; but it is none the less property, because it is invisible and intangible. It is not a corporeal hereditament; but it is incorporeal."

As was said in the Dartmouth College case, 4 Wheat. on p. 699:—

"There are many rights, franchises, and authorities which are valuable in contemplation of law, where no beneficial interest can accrue to the possessor." See also Lahiff vs. St. Joseph, etc., Society, 76 Conn. 648, and Baird vs. Wells, L. R. 44 Chan. Div. 661-676, O'Brien vs. Mo. Mu. Pro. Assn., 56 Atl. 151-152.

Even the wrongful use of the ritual, seal and paraphernalia of a secret society has been held to justify the intervention of a court of equity. Maccabees, etc., vs. Same. 97 N. West Rep. (Mich.) 779-83.

This decision was clearly right for it is a fact, which the record shows, and so generally known that this court will take judicial knowledge of it, that the ritual, seal and paraphernalia of the secret benevolent or beneficial societies, are among the necessary attributes of their successful existence. It can not be said that a corporation can be deprived of those features of its organization necessary to its existence without injury to its franchise, without an injury to or destruction of its property rights. It was correctly stated in State vs. Julow 129 Mo. on p. 173, as follows:—

"Depriving an owner of property of one of the essential at-

tributes, is depriving him of his property within the constitutional provision."

In this case the record shows that, by the Virginia statute under discussion, the plaintiff in error has been injured by the wrongful use of the name, and also of the ritual, seal and paraphernalia belonging to the Order; in other words in every prominent attribute necessary to its successful existence.

In the light of the above authorities it can not be successfully contended that a corporation like that of the plaintiff in error, the National Council, is of so idealistic a nature, so far removed from property interests, that the right to defend its name from wrongful use does not exist as it does in strictly business corporations. If the plaintiff in error, the National Council cannot get in the Courts of Virginia protection of its name, because it is a foreign corporation, then neither can any foreign insurance campany, not any other foreign corporation.

If the alleged inability to get protection against the wrongful use of its exists, it can only be upon the ground that it is a foreign corporation, for it will not be disputed that if the National Council was a Virginia Corporation it could undoubtedly get protection against such wrongful use by others. The cases are numerous where such protection has been given.

A very analogous case is that of the International Committee of Young Women Christian Assaciation vs. Young Women Christian Association, 194 Ill p. 194, 56 L. R. A. 888. In its opinion the court said:-

"Much confusion has arisen on account of the similarity in name * * * * The question here, however, to be decided is, had such persons, upon their withdrawal and reorganization, a right to adopt as a name for its managing board, 'International Committee of Young Women's Christian Associations,' a name which contains substantially the entire corporate name of appellee, a previously incorporated association, preceded by the words "International Committee of", which clearly indicate to the ordinary mind that appellant is a committee of appellee and the conference with which appellee is affiliated and with which the appellant has no connection, and to use that name in

the conduct of its affairs? We think not. The object, work, sources of support and field of labor of each being the same substantially, and the name of the appellee having been adopted and in use by it many years prior to the incorporation of the appellant, the appellant has no right to adopt as its corporate name one so similar to that of the appellee, or to incorporate in its name words, which would indicate to the public that it was the representative of appellee and the conference with which appellee is affiliated."

See also:

Grand Lodge vs. Graham, 31 L. R. A. p. 138.

McFadden vs. Murphy, 149 Mass. 341, approved in Kane vs. Shields, 167 Mass. 392.

Altmann vs. Benz, 27 N. J. Eq. 331.

Gorman vs. O'Connor, 155 Pa. 239.

Niblack Ben. Soc. sec. 90, Smith, etc., vs. Same 3 Desau. 581.

Y. M. C. A. vs. St. Louis Y. M. C. A. 91 S. W. 171.

Boston Rubber Shoe Co. vs. Boston Rubber Co., 149 Mass. 436, at 442, 443.

Spiritual etc. Temple vs. Vincent, 105 N. W. 1026.

In Re First Presbyterian Church, 2 Grant's Cases (Pa.) 240.

Edison etc. Co. vs. Edison Automobile Co., 56 Atl. 861, 865.

Hendricks vs. Montague L. R. 17 Chan. Div. 638.

But it may be insisted here, as was done in the State Courts by the defendant in error, that a foreign corporation might obtain protection in the Virginia Courts against a wrongful use of its name by persons merely arbitrarily using the same, yet that in this case no protection can be had because the Legislature of Virginia has chartered the defendant in error under the name in controversy; that the Legislature having so declared the courts can give no protection.

We submit that there is no merit in such a contention, although the Supreme Court of Virginia held in favor of it. If such contention were sound, then the property rights of every

corporation in the United States would be in danger, for every state in the Union could charter its home corporations by the names of those chartered in some other state, and thus wrongfully appropriate to the home corporations the good will belonging to the foreign companies. Such power for evil cannot legitimately reside in the several State Legislatures. It cannot be regarded as a local question. Its influence reaches beyond State lines. Its effect would be to destroy property rights, existing in other states. A state has no right to take anyone's property without due process of law, no matter whether said property is within or without the State. For as was said by this court in Blake vs. McClung, 172 U. S. on p. 260:—

"Observe that the prohibition against the deprivation of property without due prosess of law is not qualified by the words "within its jurisdiction," while those words are found in the succeeding clause, relating to the equal protection of the laws."

To hold otherwise would be to hold that State Legislatures have inherently the right to commit what by common law and law of nations would be manifest fraud.

One might as well contend that such bodies can charter companies to exist near the border of adjoining states for the purchase of goods stolen in adjacent states, and enact that such goods can not be recovered by law.

The question here at issue arose in the case of Peck Bros. & Co. vs. Peck Bros. Co., 51 U. S. Cir. Ct. App. 257-9-60. In that case the court denied that a State Legislature had any such power. It said:—

"In a certain limited sense the sovereignty of the State had conferred the name. There is however, in term sovereignty, no magic to conjure. It can confer upon individuals no right to perpetrate wrongs * * * And how is the sovereignty of a great State impugned by the denial to incorporators of a right to perpetrate such a wrong? Is it possible that a sovereignty of a State can be thus invoked to perpetrate a fraud? If it may be, then indeed will that sovereignty stand for oppression and not for justice."

In Ottoman Cahvey Company vs Dane, 95 Ills. 203-5, it is said:-

"The fact that a corporation was organized under the laws of the State, subsequent in date to the time defendants commenced business, which assumed the same name under which the defendants were carrying on their business, could confer no right upon complainant to invoke the aid of a court of equity to restrain the defendant from the use of the name."

In Investor Pub. Company vs. Dobinson, 72 Fed. 603, the complainant was a Massachusetts corporation, suing in the Circuit Court of the United States for the southern District of California. The defendant was a corporation chartered under the laws of California. The complaint was as to the use of a similar name. The defendant demurred. The demurrer was overruled.

In Goodyear Rubber Company vs. Goodyear India Rubber Glove Company, 22 Blatchford 421, it appears that the complainant was a New York Corporation, suing in the United States District Court for the Southern District of New York. The defendant who filed a cross bill, was a Connecticut corporation. Judge Wallace said:—"If the proofs warranted the inference that the complainant assumed a name by which the defendant was known, for the fraudulent purpose of deceiving the public and of supplanting the defendant in the good will of its business, the court would not only refuse to assist the complainant, but would intervene to protect the defendant."

In this case we ask that, under our cross bill as prayed in our answer, we be given the counter relief suggested by Judge Wallace as proper, when justified by the facts.

Here again, it may be insisted by the defendant in error, that while that rule may obtain as to business corporations, it has no application to the class of corporations which are parties to this litigation. We submit that we have already shown that there is no such distinction in law.

In this case, by the Statute of Virginia under discussion, not only are the plaintiffs in error interested in the property rights in the name wrongfully assumed by the defendant in

error, but the plaintiff in error, the National Council, absobers, but receives through the State Councils the amounts levied by the State Councils upon the members. Hence it has a direct pecuniary interest in the existence of a loyal State Council, existing under an appropriate and customary appellation. The existence of a State Council is not only necessary for the preservation of the existing subordinate councils, but also for the encouragement of the creation of new ones. An increase in subordinate councils means an increase in membership, and an increase in membership means an increase in the revenue of the National Council.

Can it be said that there are no property rights involved, where a usurpation of name, a wrongful use of ritual, seal and paraphernalia, and a revocation of all right to create subordinate lodges tends to diminish, if not destroy, revenue.

We insist that the distinction attempted to be drawn between the several classes of corporations cannot be successfully maintained. The principle of protection, which applies to strictly business corporations, applies to the plaintiff in error, the National Council.

How can it be reasonably contended that these beneficial organizations should not have a protection as great as that afforded strictly business enterprises? Is it not a fact, of which this court will take judicial notice, that hundreds of thousands of men have paid their little pittances into these various beneficial and benevolent orders, with the expectation of getting small amounts out in case of sickness or death? Ought they not to have reasonable encouragement, by being given as full a protection as is given to business enterprises? As was said by the Supreme Court of Virginia in Knights of Pythias vs. Oeters, supra, "This it should be the policy of the law and the aim of the courts to do." This right of protection was afforded in the similar case of Grand Lodge vs. Graham, 31 L. R. A. 133; 96 Iowa, 592.

In that case the complainant State Council had been chartered by the State of Iowa. The National Council was a Pennsylvania corporation. The defendant State Council had

no existence except as a voluntary association with a contractural charter from the supreme head of the Order. In that case the court says, on page 138:

"The question arises, what right, if any, has the plaintiff, a seceding body, *by reason of its incorporation*, to the exclusive use of the name? It seems it has no such right. The defendants have the prior right to the use of the name, as they had been using it by permission of the Supreme Lodge continuously from the time of the organization of the original Grand Lodge up to the present. The fact that they are not incorporated is wholly immaterial, for they have been doing business under this name with the implied assent of the State authorities during all these years. * * * * The right to use the name 'Grand Lodge of the Ancient Order of United Workmen of Iowa' cannot be claimed by a seceding body merely because it has been incorporated, to the exclusion of the body from which it seceded, which previously had used the name and continued to do so without incorporation."

And on page 138, the court further said:

"And it seems to be well settled that the name of a corporation, while not a part of its franchise, is, to a certain extent, property, and that it will be protected in a proper case on principles somewhat analogous to those applied to trade-marks."

Thus we see that the same rule of protection applies as well to beneficial or benevolent corporations, or even voluntary associations, as to business companies.

But it may be again contended by the defendant in error, as was held by the Supreme Court of Virginia in this case, that the Act of Assembly creating the defendant cannot be held to have been beyond the power of the legislature, as no specific clause of the Virginia Constitution can be pointed to as forbidding it.

It was upon this ground that the Supreme Court of Virginia held the Act under discussion to be valid and binding, refusing to recognize that an act can be beyond the power of the legislature "unless it can be shown that such injustice is prohibited or such rights guaranteed or protected by the con-

stitution." It further said, "It is true there are some reported cases in which judges have been understood to intimate a doctrine different from that here asserted; but it will generally be found on an examination of those cases, that what is said is rather by way of argument or illustration," etc.

Yet the same court had, in the case of Farmville vs. Walker, 101 Va., on p. 330, quoted, with approval from Loan Association vs. Topeka, 20 Wall. 663, the following principle:

"The theory of our government, State and National, is opposed to the deposit of unlimited power anywhere. The executive, the legislative and the judicial branches of these governments are all of limited and defined powers.

"There are limitations on such power which grow out of the essential nature of all free government. Implied reservations of individual rights, without which the social compact would not exist, and which are respected by all governments entitled to the name. No court, for instance, would hesitate to declare void a statute which enacted that A and B, who were husband and wife to each other, should be so no longer, but that A should thereafter be the husband of C and B the wife of D; or which should enact that the homestead now owned by A should no longer be his, but should henceforth be the property of B."

The court also declared in the same case, as follows:

"It is true that it is not always necessary, in order to declare an act unconstitutional, to point out the precise provision which it violates, if it be repugnant to the spirit of the Constitution, or of the institutions which the Constitution creates."

* * * * "It is indeed possible that we might be driven to invoke the maxim that the safety of the republic is the supreme law in order to protect society from the exercise of governmental power not directly within the limitations of the constitution, but such contingency is remote and improbable."

Not only were these principles announced by the Supreme Court of Virginia a few years before its decision in the case at bar, but in the case of Fallsburg etc. Co. vs. Alexander, reported in the same volume as the last cited case, 101 Va. 98, it put into active and effective operation these very principles. It

held that an act, giving a private corporation right to condemn property was void because it was beyond the power of the legislature, although it admitted that the Virginia Constitution was silent upon the subject. Hence it cannot be claimed that in Virginia, in order for an act to be void and beyond the power of the legislature, it must violate some express provision of the Constitution of that State.

This principle is well recognized in other states. See

State vs. Addington, 12 Mo. App., on p. 221.
Dibree vs. Lanier (Tenn), 12 L. R. A., on p. 73.
McCullough vs. Brown (So. Car), 23 L. R. A. 410.
Cooley Con. Lim. (7th ed.), p. 559.
Lewis vs. Webb, 3 Me. 326.
Willighein vs. Kennedy, 2 Ga. 556.
State vs. Duffy, 7 Nev., on p. 349.
Budd vs. State, 3 Hump. 483-492.
Vanzant vs. Waddel, 2 Yerg. 260-269.

Cited with approval in

Gulf Ry. Co. vs. Ellis, 165 U. S., on p. 156, and in
Cotting vs. Kansas City Co., 183 U. S. 79-105.
Commonwealth vs. Perry, 139 Mass. 198.
Page vs. Allen, 58 Pa. St. 338.

This limitation upon the power of the legislature is recognized in the Constitution of Virginia in force when the said statute was passed. Section 21, Art. I, Va. Constitution 1869. reads as follows:

"The rights enumerated in this bill of rights shall not be construed to limit other rights of the people not therein expressed."

McCullough vs. Brown (So. Car.), 23 L. R. A. 410-421.

Indeed there is a specific restriction upon the legislature of this State as to interfering in controversies between persons. In Section 20, Art. V, of the said Constitution, it is provided: "The General Assembly * * * * shall not by special legislation grant relief * * * * in any other case of which the courts or other tribunal may have jurisdiction."

Griffin etc. vs. Cunningham, 20 Grat. 31.

Ratcliffe vs. Anderson, 31 Grat. 105.

Hence it cannot be claimed that when the plaintiff in error, the National Council, came into the State of Virginia, it subjected its rights, interests and properties to an unlimited power in the State Legislature, nor that the Legislature was unrestrained as to its control over such corporation. It came in under the protection both of the spirit and the letter of that Constitution.

II.

We claim that the statute creating the defendant in error is void, on the further ground that it violates paragraph 1, Section 10, Art. 1 of the constitution of the United States, prohibiting a State from passing any law impairing the obligation of a contract.

The charter granted by the National Council to a State Council is a contract obligatory and binding upon such State Council, and upon each member thereof. By it, right and authority are given to the State Council to use the name, the ritual, seal and paraphernalia of the Order. By it, is also given the power to create subordinate councils. By it, is also given the right to have its representatives become members of the National Council, the corporate head of the Order. In return the State Council and its members obligate the said council and its members to be and remain subordinate to the National Council, as prescribed by the Constitution of the Order. It contracts to use such rights, privileges and powers for the maintenance and advancement of the Order, among which duties are the maintenance of existing subordinate councils and the creation of new ones. These last-mentioned duties are all essential for the maintenance of the Order, as it is from the membership of the Order that the revenue comes, which is necessary for the existence of the National Council. Under the Constitution the State Council is the intermediary through which the said revenue comes to the National Council. Thus it is manifest how necessary the existence of the State Council

is to the National Council and to the general advancement of the Order.

As was said by the Supreme Court of Virginia in Knights of Honor vs. Oeters, 95 Va. 610-615.

"Their schemes of benevolence, by which they aim to provide benefits for their members in time of sickness, and indemnity to their families upon their death, cannot be maintained, unless the rules and regulations prescribed by their constitution and by-laws for the attainment of these objects be substantially upheld."

In the light of these facts, it cannot be doubted that a contract of value and of benefit was created between the National Council and the State Council by the acceptance of the latter of the charter granted by the former.

In Kain vs. Arbeiter etc. Verein, 102 N. W. 746, it was said:

"And on principle of the authorities cited, not only the articles of association of the bund, but also its constitution, is a part of the contract between it and the corporations associating. Thus viewed, they certainly do not warrant the secession of August 5th, nor the amendments of the verein constitution, which followed. Both the State (Article 4, sec. 43) and the Federal (Article 1, sec. 10) Constitutions prohibit laws impairing the obligations of contracts," etc., etc.

As was said in Kuhl vs. Mayer, 42 Mo. App. 474:

"In case of unincorporated voluntary associations like the present, the rights fixed by their constitution and by-laws rest in contract."

In Sup. Lodge etc. vs. Malta, 30 L. R. A. 838-9, it is said:

"The laws of this Order, as of other benevolent associations, * * * * are to be taken as parts of its contracts with its members, and are of such great moment in the determination and enforcement of their respective rights and obligations under these contracts."

In Baldwin vs. Hosmer, 25 L. R. A. 743, it is said:

"The constitution and laws of the Order were the contract between the parties." See

Bacon Ben. Society, sec. 37.

Knights etc. vs. Nitsch, 95 N. W. 326.

Union Ben. Soc. vs. Martin, 67 S. W., on p. 49.

Such being the contract between the National Council and the old State Council, there can be no question but that the statute creating the defendant in error, making it an independent organization and releasing it from all its duties and obligations to the National Council, was the authorization of a breach of contract.

As was said in McGahey vs. Virginia, 135 U. S., on p. 693:

"It is well settled by the adjudications of this court that the obligation of a contract is impaired, in the sense of the constitution, by any act which prevents its enforcement, or which materially abridges the remedy enforcing it," etc., etc.

The statute here complained of, even goes so far as to authorize the defendant in error to use the rights and privileges which it received from the National Council upon condition of using them subject to and for the benefit of the Order, to the serious detriment and attempted destruction of the Order in this State, and to its pecuniary loss. It is admitted by the defendant in error that by its actions under said statute it is receiving money which would go to the Order for the benefit and maintenance of the National Council and its subordinate, the loyal State Council. See Agreed Fact 9, page 131.

Thus it appears that by the breach authorized by said statute the defendant in error is injuring the National Council and the loyal State Council in their properties, consisting of the name, ritual, seal and paraphernalia, and also in their revenues.

Such being the nature of the injuries arising from said breach, we submit that the defendant in error cannot successfully claim that the contracts involved are not of such a nature as are covered by the above-cited provision of the Constitution of the United States, since property interests are involved. We have already called attention to the fact that the Supreme Court of Virginia, in its opinion in this case, recognized and declared that fact.

The defendant in error is mistaken in the narrow construc-

tion it gives to the word "contract," as used in the Constitution of the United States. See

Dartmouth College case, 4 Wheat. 518, 630, 644 and 645.
Bryan vs. Board of Education, 151 U. S. 650.
Fuller vs. Trustees, 6 Conn. 532.
Pulford vs. Fire Department, 31 Mich. 458.

See also Kern vs. Arbeiter etc. Verein, 102 N. W. 746-750, where this very contention was made.

There are many rights of enjoyment, privileges and personal benefits growing out of agreement or contract, which, though having "no actual market value," the courts will enforce because of the mutual obligations contained in such agreement or contract, provided they are not of a "governmental" nature, like marriage and divorce, or similar rights.

Medical etc. Soc. vs. Weatherly, 75 Ala. 248.
Commonwealth vs. St. Patrick Soc., 2 Binney 441.
Evans vs. Philadelphia Club, 50 Pa. 107.
Society vs. Commonwealth, 52 Pa. 125.
People vs. Musical M. P. Union, 118 N. Y. 101.
Sibley vs. Club, 40 N. J. L. 295.
Otto vs. Tailers P. and B. Union, 75 Cal. 308.
Savannah Cotton Exchange vs. State, 54 Ga. 668.
Fisher vs. Keane, L. R. 11 Chan. Div. 353.
Lambert vs. Wadhams, 46 L. T. Report. 20.
Huber vs. Martin, 105 N. W. 1031.

Such contracts, the courts hold, may not be broken by individuals; and they embody rights that courts of equity will protect. Can it be successfully claimed that, though such contracts may not be broken by individuals, the States can authorize a breach of their obligations. Never has this court approved so narrow a construction of the word "contract" as used in the Constitution of the United States.

It is true that this court has said that the Constitution only protects "property rights." But we submit that the word "property" was not used in the narrow, technical sense, con-

tended for by the defendant in error. It was used as contradistinguished from "governmental rights."

As was said in Stone vs. Mississippi, 101 U. S., on p. 820:

"The contracts which the Constitution protects are those that relate to property rights, not governmental. It is not always easy to tell on which side of the line, which separates governmental from property rights, a particular case is to be put."

The word was construed in the early case of Dartmouth College, supra, in which, on p. 529, Ch. Jus. Marshall said:

"The provision of the Constitution never has been understood to embrace other contracts than those which respect property or some object of value, *and confer rights which may be asserted in a court of justice.*"

Even as to the contract of marriage, he said:

"When any State Legislature shall pass an act annulling all marriage contracts, or allowing either party to annul it without the consent of the other, it will be time enough to inquire whether such can be constitutional." See also opinion of Mr. Justice Story, on pp. 695-6.

We submit that the word covers all agreements between persons, by which obligations are assumed affecting a benefit or advantage to either of them and enforceable in a court of law or equity, unless subject to the reserved power of the State, by statute or otherwise, to modify or prohibit the same.

Of course "the matter of amount does not determine the question of right, and the party who has a legal right may insist upon it, if only a shilling be involved." Gulf etc. Rd. Co. vs. Ellis, 165 U. S. 150-3.

Nor need the property be actually *in esse*, for the future revenue under a contract is equally a property right.

These constitutional protections "should be liberally construed. A close and literal construction deprives them of half their efficiency, and leads to gradual depreciation of the rights, as if it consisted more in sound than in substance." Boyd vs. United States, 116 U. S. 616-635, and case last cited, p. 154.

III.

The statute is also violative of section 1, 14th amendment of the United States Constitution, which provides, "nor shall any state deprive any person of life, liberty or property without due process of law."

We have already shown that the right to the name and the attributes attached thereto is property. We have also called attention to the fact that the restriction upon a State as to taking property is not confined to persons "within its jurisdiction" or limits. And, in support of this, we called attention to the language of this court in Blake vs. McClung, 172 U. S., on p. 260. We submit that the statute complained of is a flagrant effort to take, so far as the National Council is concerned, the property of the citizen of another State without due process of law.

The rights of every individual must stand or fall by the same rule or law that governs every other member of the body politic or land, under similar circumstances, and every partial or private law which directly proposes to destroy or effect individual rights, or does the same thing by affording remedies leading to similar consequences, is unconstitutional and void, as against the "law of the land."

Wally's Heirs vs. Kennedy, 2 Yerg. (Tenn.), 556.
State vs. Duffy, 7 Nev., on p. 349.
Budd vs. State, 3 Hump. 483-492.
Millett vs. People, 117 Ill., on p. 301-302.
Holden vs. James, 11 Mass. 396, 405.
State vs. Pennoyer, 18 Atl. Rep. 878.
Cooley Con. Lim., pp. 556-7-9.
Railway vs. Ellis, 165 U. S. 154.

The "law of the land" and "due process of law" are virtually synonymous.

State vs. Julow, 129 Mo., p. 174.

Here, after passing a general statute (p. 127), inviting the plaintiffs in error by name to exist and operate in the State, along with certain other similar organizations, the legislature

of Virginia undertakes to pass a law applicable solely to the plaintiffs in error, not only hampering and restricting the plaintiffs in error, but giving their rights, powers, privileges and property interests to another organization.

Such an injustice and injury cannot be said to have been done according to the "law of the land," or under "due process of law." Lewis vs. Webb, 3 Me. 326, cited in Cooley Con. Lim., p. 559.

IV.

The statute is void, because it violates the provisions of section 1, 14th amendment of the Federal Constitution, forebidding any State "to deny to any person within its jurisdiction the equal protection of its laws."

"The equal protection of the laws is a pledge of the protection of equal laws."

Connolly vs. Union etc. Co., 184 U. S. 540-559.

As above noticed, the State of Virginia, by said general statute (p. 127), invited the plaintiff in error, the National Council, to exist and continue within its limits. When it so acted, it was with the knowledge as to the character of its organization. It knew that it would so exist within those limits by means of a State Council and subordinate councils, composed of the citizens of that State.

In State vs. Odd Fellows' Grand Lodge, 8 Mo. App. 148, 155-156, it is said:

"These organizations exist, with ramifications extending frequently throughout the civilized world, before the charter of the particular lodge or church society is granted; and in granting the charter to any particular lodge, or to any State Lodge of Odd Fellows, or Masons, or to any religious corporation the Legislature necessarily recognizes the established rules and customs which bind these societies together, so far as they are not inconsistent with the laws and policy of the State. * * * * To deny to it the power of discerning who constitutes its members, is to deny the existence of such a society, or *that there is*

any meaning in the name which the Legislature recognizes when it grants the charter."

It knew that such was the peculiar character of this organization. Having not only authorized its entrance into the State, but also thereby authorized its own citizens to organize themselves into the voluntary associations, known as the State Council and the subordinate councils, the State became doubly bound to give the plaintiffs in error equal protection, as long as they were within its jurisdiction. It could not expel the State Council nor the subordinate councils, for they were legitimate voluntary associations composed of its own citizens.

Whether or not it could expel the National Council, it has never done so. This was clearly announced by the Supreme Court of Virginia in its opinion in this case. Hence the National Council still remains "within its jurisdiction."

Nor is it in the power of the State, after inviting a number of corporations of similar organizations into its midst, to arbitrarily select one of them by name and declare that it shall no longer do business in the State, without some reasonable justification. Even if it should have the power to deny an original entrance to some single corporation, while authorizing all other similar ones to enter, yet it has not the power to drive such unfavored corporation from its midst after inviting it to enter. Surely it has no such power, merely for the purpose of giving its name and privileges to a corporation of its own creation.

This court will look beyond the act of incorporation, and ascertain what was the object of the discrimination.

Yick Wo vs. Hopkins, 118 U. S. 356-366.

Atchison etc. Rd. Co. vs Matthews, 174 U. S., on p. 105.

Especially is this true where the nature of the corporation brings it so clearly and forcibly within the jurisdiction of the State. It is not like a corporation which merely rents an office in a State and appoints clerks or agents. Here the corporation virtually enters into the being of the State, by its creating local associations, composed of citizens of the State, associations which are recognized in law as having in part separate entities or existence, for the subordinate councils have

pecuniary liabilities for sick, and death benefits, for which they are separately liable. It is impossible to conceive how a foreign corporation could more fully come within a State jurisdiction. It more than meets the test suggested in Blake vs. McClung, 172 U. S. 239-261.

We also insist that the State had no power to force the National Council to remove from its limits. As we have already said, when the State invited the National Council to exist and operate within its limits, it knew the character of that corporation, how it would authorize the creation within the State of a State Council and the many subordinate councils, unobjectionable voluntary associations, composed entirely of residents of the State. The State having thus authorized the creation of these domestic organizations, and it is to that extent only that the National Council exists in the State, it had no power to so restrain the National Council, or the State Council, as to destroy the existence of the State Council, or to drive it beyond the State limits.

As was said in Relfe vs. Rundle, 103 U. S. 222-225:

"No State need allow the corporations of other States to do business within its jurisdiction unless it chooses * * * *, but if it does, without limitation, express or implied, the corporation comes in as it has been created. Every corporation necessarily carries its charter wherever it goes, for that is the law of its existence."

Here the State of Virginia not only allowed the creation of these unincorporated associations, parts and instrumentalities of the National Council, but it went so far as to give the National Council a domestic footing within the State by chartering one of the voluntary associations and making it a domestic corporation entitled to be treated as every other domestic corporation of like character. It chartered the trustees of the Lovettsville Council, one of the subordinate councils. pp. 126-127.

"The relator itself (subordinate lodge) is not a Knight of Pythias. Corporations do not become members of the Order, it is merely an instrumentality through which the work of the

Order is carried on." Grand Lodge K. of P. vs. People, 60 Ill. App., on p. 556.

When it so chartered said subordinate lodge it intended to give it the full measure and means of existence consistent with the object of its creation, and to allow for its existence and maintenance the use of all the means and attributes then recognized as essential to such existence and maintenance.

In that charter the State went so far as to expressly recognize the existence of the State Council. Twice in the third section of the act it mentioned the State Council, and declares the subordinate council subject to that higher body. To drive the State Council therein referred to, namely the State Council as created by the National Council, from the State would be to deprive its own creation of the means and attributes then recognized as appropriate and essential to its proper existence.

It will not do to say that the State did not mean to thus tie its hands or surrender any power over this Order which it had invited within its jurisdiction. The intent of the State is to be ascertained by what she said, explained by the circumstances that then existed, and not by any subsequently developed purpose or desire. A change of intent does not disprove the prior one. The State at that time was, by general statute, declaring its desire to encourage the spread of this Order within its limits. Entertaining that desire, it duly and solemnly created this subordinate council into a domestic corporation.

Surely it cannot be reasonably contended that the State has any power to revoke this charter given by it, or to order the subordinate council to cease existing within the State. If it cannot drive from its limits this subordinate council, can it so act towards the National Council, or to the State Council, as to injure the usefulness of this subordinate council, or to deprive it of the means, known and recognized by the State at the time it was chartered, as necessary to its successful existence. If it cannot drive from its limits this domestic corporation, known by the State, when it created it, as an instrumentality of the National Council, how can it drive out the latter? If it cannot drive out this domestic corporation, which, when it created it,

was declared by the State to be and remain subordinate to the State Council, as created by the National Council, how can it drive out such State Council? It is manifest that any such action, so injurious to its own creation, would be a breach of the contract made by the State in the charter given by it. Hence we insist that the State has no power to drive the National or State Council from its jurisdiction, as long as those bodies exist for their original purposes.

Being thus within the jurisdiction of the State at the time of the adoption of the statute complained of, and not having been driven without its jurisdiction by said statute, as declared by the Supreme Court of Virginia, in construing the same, the National Council was entitled to the equal protection of the laws.

In Marchant vs. Penn. R. Co., 153 U. S. 380, this court said, on p. 389:

"The clause in question means that no person or class of persons shall be denied the same protection of the laws which is enjoyed by other persons or classes in the same place, and under like circumstances."

Duncan vs. Missouri, 152 U. S., p. 382.

Rejan vs. Farmers Loan and Trust Co., 154 U. S. 362-410.

Cotting vs. Kansas City, 183 U. S. 105.

Railway vs. Ellis, 165 U. S. 150, 3-4.

Connolly vs. Union etc. Co., 184 U. S. 540-558.

V.

The denial to the National Council, plaintiff in error, of the right to operate in Virginia, is, in effect, an unwarranted abridgement of the privileges of the members, citizens of the United States.

If it be sought to uphold the decree of the Virginia Court on the ground that any State may exclude from its borders a foreign corporation, we answer that the Pennsylvania corporation, the National Council, is not such a corporation as the State

can refuse to allow to come within its jurisdiction. The defendant in error will doubtless again insist that the National Council is not a "business" corporation, but organized merely for the advancement of certain moral, educational and governmental purposes, and that the fraternal feature of it is merely incidental. We admit that the main purpose of the organization was and is the spreading and advancement of certain moral, educational and governmental principles, and that the beneficial feature is a minor one. But we claim that this minor one creates sufficient property interests to bring us within the strictest construction of the word "contract," as used in the clause of the United States Constitution above quoted. If we have no such property interests or rights, but are in the strictest sense a political organization for the advancement of national questions, then we insist the State cannot refuse to allow the organization to enter its limits, have its subordinate associations and increase its membership.

It is true that this court has frequently declared that a State has power to declare that foreign corporations shall not enter its limits. But this ruling has always been as to "business" corporation, upon the theory that a State has a right to declare what kind of business shall be done within its limits, and by whom it may be done. This principle may be wise, because upon the material interests of a State its revenue and the successful power of the sovereign right of taxation rests.

But even as to this rule the courts have recognized an exception, viz.: "Where a corporation created by one State rests its right to enter another and engage in business therein upon the Federal nature of its business." Hooper vs. California, 155 U. S. 648.

Here according to the defendant in error, no question of "business interests" are involved, but merely the right to come within the State and organize for the advancement of certain mental, moral and political questions. We insist that if that be true, then the State has no power to prohibit our entrance, especially as the principles advocated are National questions.

We insist that no State has the power to say that an organi-

zation of another State, whether incorporated or voluntary, cannot enter the limits of a State for the spread of religious, educational, or governmental principles, unless those doctrines be shocking to decency or manifestly dangerous to the body politic.

No State can say that such an organization cannot enter its limits to solicit adherents and form them into local bodies or associations.

Upon what principle can it be said that a State can declare that the Red Cross Society, American Missionary Society, a Civil Service Reform Society, a National Educational Society, a Municipal Ownership Society, a Republican or Democratic Party, shall not enter its limits for the purposes of spreading the principles advocated, increasing adherents, and establishing local branches or councils.

It could not prevent individuals from entering its limits for such purposes. Can it be successfully claimed that the fact of incorporation gives such power? The decisions of this court, heretofore made upon the question of the power of exclusion by a State, has not been put upon the narrow ground that it was a corporation, but upon the principle that a State has the power to put restrictions upon "business" enterprises, and say who shall and who shall not do "business" within its limits.

"The right of the people peaceably to assemble for lawful purposes existed long before the adoption of the Constitution of the United States. In fact, it is, and always has been, one of the attributes of citizenship under a free government."

U. S. vs. Cruikshank, 92 U. S. 542.

Watson vs. Jones, 13 Wall. 679-729.

Franklin vs. Commonwealth, 10 Barr. 357-359.

Society etc. vs. Commonwealth, 52 Pa. 125-132.

Especially is this true where the questions partake of a National nature. In the case last cited it was said:

"The right of the people peaceably to assemble for the purpose of petitioning Congress for a redress of grievances, or for anything else connected with the powers or duties of the National Government, is an attribute of National citizenship,

and, as such, under the protection of and guaranteed by the United States."

Since this right is "under the protection of and guaranteed by the United States," then we submit that such assemblies or associations or incorporations are just as far removed from State prohibition or unjust and destructive interference, as are those "business" associations or incorporations, which are agencies of the government, or are engaged in interstate commerce. The same National character gives the same National protection from State restriction or prohibition.

If interstate enterprises have a right to enter a State, they have a right to install their agencies or representatives therein. If the right to assemble and associate for our purposes is a National right, we have a right to form local associations or instrumentalities within the several states.

We therefore insist that if we have no "business" or "property" interests which give us a right to protection under the clauses of the United States Constitution above quoted, then our National character, because of our principles and purposes, entitle us to National protection from State interference.

VI.

The rights to be protected by these proceedings are not only those of the plaintiff in error, the National Council, but also those of the State Council, a voluntary association, composed of the citizens of Virginia, those of the Lovettsville Council, a domestic corporation of Virginia, and those of each of the other subordinate councils in the State, voluntary associations, composed of the citizens of Virginia, as well as those of the individual members of the subordinate councils, who are citizens of Virginia.

"A corporation has a two-fold claim. It has a claim to respect for the law of its creation, and it has a claim to respect for the rights and privileges of the individuals who compose it," as was said in the argument in Bank of Augusta vs. Earle, 13 Peters, 519-547.

But by the bill of complaint in this case several members of the Order, who were officers in the loyal State Council, were made parties defendant, and are here as plaintiffs in error.

These individual plaintiffs in error for themselves, without regard to the rights of the National Council, insist that the said act is void as to them for the same reasons above given as to the National Council. They insist that as citizens of Virginia, composing the loyal State Council, a voluntary association existing in that State, they were entitled to all the protection as to their rights, privileges and property, as other citizens of said State composing similar local lodges or councils of similar Orders. They insist that, as such citizens, they have the right to continue the use of the name previously selected and used by them to designate their association, and could not be deprived of the same by any power of the State, and certainly not when other persons similarly situated were not deprived of their names.

In Vanzant vs. Waddel, 2 Yerg. 260-269, twice approved by this court, as shown above, it was said:

"The right to life, liberty and property of every individual must stand or fall by the same rule of law that governs every other member of the body politic or "land" under similar circumstances; and every partial or private law, which directly proposes to destroy or affect individual rights, or does the same thing by affording remedies leading to similar consequences, is unconstitutional and void. * * * * The idea of a people through their representatives, making laws whereby are swept away the life, liberty and property of one or a few citizens, by which neither the representatives nor their other constituents are willing to be bound is too odious to be tolerated in any government where freedom has a name."

They insist that the State has no power to take away their name and bestow upon other persons, without regard to whether the State had the power to declare by a proper statute that they should not create new subordinate councils. That even if the State had the power to declare such a prohibition, it had no power to declare they should not use their own name.

A state legislature has no power to say that a man, christened or otherwise named as John Brown, shall not use his surname, nor can it say that a commercial partnership conducted under the name of Smith & Brown, shall no longer be carried on under the name. For the same reason it has no power to say that a voluntary association, composed of its citizens and existing in its limits under the name of the Masons, Knights of Pythias, or Junior Order of United American Mechanics, and then rightfully using the same, shall no longer use it.

We have shown that the name is of value to us. But in this litigation that question is immaterial. That question might be of some force if we had started this litigation, if we had appealed for the aid of a court of equity, if we had asked that the defendant in error should be enjoined. But here the defendant in error appeals to such a court and prays that we be enjoined from the use of the name. Hence the question is not whether we have sufficient "property interests" to ask for protection from a court of equity, but whether a court of equity shall forbid the further use of a name rightfully ours at the common law. We submit that it is one of the personal rights of men to select such a name as they may choose, provided no one else is entitled by law to its exclusive use. That it is an interference with the "liberty" of men to prohibit such continued use. Here men have assumed the name for the advancement of certain purposes and have spent their money for such an advancement;—under it have entered into mutual obligations and have pecuniary interests, as well as other interests, in its success. We insist that it is an interference with the "liberty" of the citizen to prohibit its further use.

Hence we insist that so much of said statute, as attempts to take away from us and give to defendant in error the name in controversy is void. Of course, if that part of the statute is void, the rest is also void, as it is not susceptible of separation.

But we further insist that the other section in the Act, giving the defendant in error the exclusive right to create subordinate councils is also void.

It is a manifest interference with the "liberty" of the citizen

to say that, where several persons have associated themselves together for a lawful purpose, they can not agree or contract with other persons that they may become interested in the purposes of such association, and be authorized to form themselves into subordinate divisions of such associations. The scope of the meaning of the word "liberty" as guaranteed in the Constitution is amply broad to protect from State interference such undertakings or associations, especially when such interference is confined to one association out of many similar ones, and manifestly done to give a benefit to some other persons. It would be a narrow view of the purpose and aim of free government to restrict the guaranty of personal liberty to freedom from bodily restraint. It properly includes the right of association for mutual benefit, and for social and patriotic purposes. The declared objects of the Junior Order are broad in their nature and appeal to the fraternal and patriotic instincts of a large portion of our citizens.

In

Butcher's Union v. Crescent City, 111 U. S. 757,

the Supreme Court of the United States, through Justice Fields, has said that the words life and liberty cover all rights which the Declaration of Independence declares all men inalienably endowed with, "life, liberty and the pursuit of happiness."

And in the case of

State v. Julow, 129 Missouri, 172,

the court say: that "the rights thus guaranteed (by the Fourteenth Amendment) are something more than the mere privilege of locomotion; the guaranty is the negative of arbitrary power in every form which results in deprivation of right. These terms, 'life, liberty and property,' are representative terms and cover every right to which a member of a body politic is entitled under the law. Within their comprehensive scope are embraced the right of self-defense, freedom of speech, religious and political freedom, exemption from arbitrary arrest, the right to buy and sell as others may—all our liberties, personal, civil, political—in short, all that makes life worth living; and of none of these rights can anyone be deprived

except by due process of law."

To the same effect are:

Frorer vs. People, 141 Ill. 171-181.
Palmer vs. Tingle, 55 Ohio State 423.
Cotting vs. Kansas City, 183 U. S. 79-107-109.
State vs. Scougal, 3 S. Dak., p. 55-58.
Cummings vs. Missouri, 4 Wall. on p. 320.
Allgeyer vs. Louisiana, 165 U. S. on p. 587-8.
People vs. Coolidge, 50 L. R. A. 493-95.
Eden vs. People, 32 L. R. A. 659.

Not only does the Virginia Statute deprive the plaintiffs in error of their civil and political liberties, but, as we have already pointed out, it directly invades their vested property rights. Amongst the purposes of the Jr. Order of United American Mechanics as set forth in the charter of the National Council secured in the State of Pennsylvania, in the Constitution and General Laws of the National Council both before and after the Minneapolis revision, and in the requirements for the government of the State Council of Virginia as followed by that council at all times, has been the conferring of sick and funeral benefits. Since 1898 there has also been universally recognized as one of the essential purposes of the Order the maintenance of an Orphans' Home. Continued membership in the Order and contribution to the benefit fund in favor of sick members and the families of deceased brothers, and to the maintenance of the Orphans' Home, entitle all members so contributing to similar benefactions under similar circumstances. This is one of the prime inducements to the continuance of membership once acquired in fraternal and benevolent orders and is the chief inducement for the contributions made by members in favor of the benefactions established by the Order. For the legislature to attempt to deprive members in established lodges of any order of the right mutually to continue these contributions and severally to receive under the prescribed conditions and regulations of the Order their appropriate relief, is to divest them of property-rights which have become vested in them; rights which rest upon contract; enforcible against the Order,

and entitled to the protection of the law even against incroachments of the legislature. In the case at bar the Virginia Legislature made no effort to preserve to the minority members of the Order in Virginia their vested rights, but transferred the property and the name of the Order to a favored faction in violation of essential constitutional guaranties.

> "If the act of a state legislature is not in its nature purely legislative, but is in its nature judicial, the legislature has usurped judicial power, and under state constitutions that act will be void, and if it affect liberty or property it affects them without due process, in violation of state constitutions and the Fourteenth Amendment."
>
> Brannon on the Fourteenth Amendment, page 296.

It may be contended that the legislature opened the way to all members of the state council to retain their position in the Order by joining in the acceptance of the charter and becoming members of the corporation. This argument is fallacious. All members were entitled to retain their rights in the Order without imposition upon them of any other requirements than those established by the rules of the Order. The legislature undertook to fix a new condition of membership in the Junior Order which its constituent bodies had never demanded and which had never been required by the National Council. It was an arbitrary discrimination between members equally entitled to all the rights of the Order—a discrimination violative of the constitutional protection guaranteed in the Fourteenth Amendment.

We submit that whether looked at from the standpoint of the National Council or from that of the individual plaintiffs in error, as citizens of Virginia, the statute complained of is void, and should have been so held by the State Courts.

We ask that this court will so decree, and also that it will give us the relief to which we are entitled under our cross-bill.

Respectfully submitted,

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Supreme Court of the United States

OCTOBER TERM, 1906.

No. 89.

THE NATIONAL COUNCIL, JUNIOR ORDER UNITED AMERICAN MECHANICS OF NORTH AMERICA, ET AL., PLAINTIFFS IN ERROR,

vs.

THE STATE COUNCIL OF VIRGINIA, JUNIOR ORDER UNITED AMERICAN MECHANICS OF THE STATE OF VIRGINIA, DEFENDANTS IN ERROR.

IN ERROR TO THE SUPREME COURT OF APPEALS OF THE STATE OF VIRGINIA.

ADDITIONAL BRIEF FOR PLAINTIFFS IN ERROR.

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ADDITIONAL BRIEF FOR PLAINTIFFS IN ERROR.

The defendant in error alleges on p. 10 of its first note that "the counsel for the plaintiffs in error have never defined what contract, enforceable by the powers of the courts, was violated by the act of February 17th, 1900."

We submit that in our petition to the Supreme Court of Appeals of Virginia we clearly stated the contract between the National Council and the State Council. See Record pp.

23, 47, and 48. We have again stated it in our brief to this court.

We will again restate it:

The record shows:

1st. That the old State Council received of the National Council the contractual charter creating that State Council.

2nd. By that charter it created the entity known as the State Council.

3rd. By that charter it bestowed the name in controversy upon that entity.

4th. By that charter it gave it the right to use the State seal.

5th. By that charter it gave the State Council the right to use the ritual and paraphernalia.

6th. By that charter it gave it the power and authority to create subordinate councils.

Until the grant and acceptance of these powers and privileges none of them existed in any person or association in the State of Virginia. The creator and giver of them was manifestly the National Council. The recipient of them was the State Council.

The State Council in accepting them, manifestly received them for well-recognized purposes, and subject to corresponding obligations and duties, among which are the following:

1st. That it would recognize and obey the National constitution of the order and its general laws.

2nd. That it would be and remain subject and subordinate to the National Council.

3rd. That it would create subordinate councils, who should be and remain parts of the order and subject to the laws of the order.

4th. That its efforts and undertakings should be, not antagonistic to, but for the advancement and extension of, the order.

It can not be denied that such duties and obligations were the consideration for the granting of the State charter or contract between the National and the State Council.

There only remains then for us to show that the obligations between the parties were of such nature as to be enforceable by the courts.

We submit that the law is fully and clearly established that the courts will restrain State Councils from violating or ignoring these obligations and duties. The courts hold that any effort or act of however large a majority of a State Council in violation of these duties and obligations may be restrained. This power in the courts is clearly established as to any effort to secede from the order, and to set up an independent organization. We need not recite the numerous authorities cited in our brief.

Hence it must be recognized as established that there is a contract enforceable by the courts against a majority in revolt, where such majority acts of its own volition. And the only question, that remains, is whether the State can, without violating the U. S. constitution, authorize a breach of this contract, universally recognized as so valuable as to be entitled to full protection and enforcement by the courts.

We have shown in our brief:

1st. That by the decision of the Supreme Court of this State in its decision in this case "property rights" are involved.

2nd. That the revenue of the National Council is involved.

3rd. That the successful continuance of the loyal subordinate councils is involved.

4th. That the sick and funeral benefits of the individual members are involved.

5th. That the "name" is a property right entitled to protection from the courts.

6th. That the ritual and paraphernalia of the order are rights entitled to protection by the courts. For in *Great Hive*

etc. v. *Supreme Hive etc.*, 135 Mich. 392-402 it is said.

"In what respect are defendant's initiatory exercises and unwritten work secret, if a rival order possesses and exercises the right to divulge them to a hostile membership. Each of these orders is based upon the principle that the value of the confidential relations established by the secrecy of its work is of vital importance to its welfare. Neither of them could hope to succeed in competition with rival orders whose secrecy is protected and respected."

But the defendant in error attempts on pp. 10, 11 and 12 of its additional brief to enforce its view by insisting that no contract was established between the parties---but that the charter given by the National Council "created still only a status or relationship, which was terminable at the pleasure of the individuals joining the order."

It is of course true, that each individual can leave the order when he may see fit. But it is not true that a majority of the State Council could, without violating said agreement, form itself into an independent and antagonistic order, and use the same name and use the knowledge, acquired under said agreement, of the ritual, and use the paraphernalia of the order, against the consent of the National order.

The authorities are without exception to the effect, that if such a course is attempted by any majority of a subordinate body, of its own volition and action, it can be and will be enjoined by the court. Hence the courts have universally recognized that there does exist obligations between such bodies which, while they allow persons to withdraw from membership, will not permit them to form themselves into antagonistic associations, and assume the name and use the ritual and rights of the original body. Hence it is idle to say that a mere "relation" exists, which upon termination by withdrawal, ceases to restrain the withdrawing members from using those rights and powers which they acquire upon the assurance of remaining

members of the order and subordinate to the supreme head. Therefore the only question is, whether a State can by statute release the withdrawing members from obligations which, as the courts hold, can not be violated by those same persons when acting of their own volition and without statutory sanction.

We submit that the State can not release the members from those lawful and binding obligations without impairing the obligation of a contract.

The defendant in error attempts to meet the case of *Kain v. Arbeiter, Etc.*, 102 N. W., 746, on this point, by pointing out that it involves a specific benefit certificate. We submit that that is a detail which cannot affect the principle announced, that a contract existed between the bund and subordinate associations. If such a contract existed to protect a specific benefit, can it be any less availing to protect hundreds or thousands of benefits paid for by the members of the subordinate councils?

The defendant in error attempts to prevent the rights of the voluntary associations, the State Council and the subordinate councils, and the rights of the individual members, from being considered and protected by this court, upon the ground, that they are mere "agents" of the foreign corporation, the National Council, and hence have no separate rights which can appeal to this court.

In the first place the State Council was made a party, so far as a voluntary association could be made a party; since relief is expressly prayed against it through its officers and members.

In the second place, if the State Council was not made a party in the only way in which a voluntary association could be made a party, then the individuals named in the last paragraph on page 62 of the record were made parties, especially those therein named who were not named in the second paragraph on the same page as officers. If made parties as individuals, they were entitled to defend upon the ground of their individual rights.

In the next place the subordinate councils were also brought before the court, so far as their rights and interests were concerned, because the defendant in error by making the Constitution and General Laws of the Order a part of its bill of complaint, by filing it as an exhibit with the bill, in effect proved, if it did not expressly allege, that the State Council was the agent, representive, or instrument of the loyal subordinate councils, just as much as it was an agent or instrumentality of the National Council. Hence the rights and properties of the subordinate councils were directly involved, and its representative being a party is entitled to ask this court to protect those rights and properties.

Our next reply is, that it is manifest that the word agent is used because of the paucity of language, as it is evident that neither the State Council nor the subordinate councils are agents in the ordinary acceptation of the term. They do not represent the National Council for the sole benefit of that body. They rather represent the associations or individuals of which they are respectively composed, having, it is true, derived their right to exist from the National Council. So far as sick and funeral benefits are concerned, it is absurd to think that local fraternal bodies are organized as mere agents of, and for, the benefit of the head of the Order. It cannot be denied that the main purpose, which individuals have in forming such local associations, is their own benefit. This is peculiarly true of this Order, for, here, all sick and funeral benefits come directly from the subordinate councils. Hence, while it is true that the State Council and the subordinate councils have a close relation with the National Council, and do represent that body, they are not mere agencies, in the ordinary acceptation of that word.

Our next reply is that if the defendant in error is right in its contention, that the subordinate bodies are mere agents of the National Council, then the State having itself chartered the Lovettsville Council as agent of the National Council, gave the

National Council a domestic position in this State, which would prevent her from driving the National Council from her limits, or taking any step which would tend to injure the National Council through said domestic agency, by depriving said domestic agency of any attribute or instrumentality of exstence recognized in the charter of the domestic agent.

Hence, even if the Lovettsville Council cannot be heard of and for itself alone, the National Council has the right to refer to such council as an agent of or part of itself, and for its own benefit insist that no right to which it is entitled through its domestic agent shall be violated. Our next reply is—that if the loyal subordinate councils, are mere agents of the National Council, then the National Council is entitled to set up in its own behalf and for its own benefit all the rights and privileges to which those subordinate councils are entitled, since it is entitled to all the rights to which its agents are entitled. Hence it follows that any plea for protection which the subordinate councils could effectively set up for themselves were they independent bodies, the National Council can set up, as it is entitled to all the rights existing in its agents. Therefore as these loyal councils have been declared by the Supreme Court of Virginia as still existing in the State, it also declares that the National Council continued to exist therein, and remained "within its jurisdiction." When that court declared that the National Council remained in this State through such agencies, it should have recognized that the National Council was entitled to the same equal protection of the laws, and could not be subjected to unjust discrimination as to its future operation.

It is idle for the defendant in error to contend upon pp. 15 and 16 of its additional brief that the State can exclude the National Council from its limits, or that it has not treated that company unjustly and unequally as compared with other fraternal bodies invited into the State by the same statute of 1898, p. 127. The National Council has not been excluded

from the State. The discrimination is an admitted fact. See Record p. 137. "Clear and hostile discriminations against particular persons, especially such as are of unusual character unknown to the pratice of our governments might be obnoxious to the constitutional prohibition." *Cotting* v. *Kansas City*, 183, U. S., 79-106.

Our next reply is that if the State Council, or the subordinate councils, or the individual members of the latter can not be heard in this litigation, (which we deny), still the National Council, both in its own right, and as in law representing each of these, has the right to put forward each defence, which either of them could assert, so far as the attempted injury to any one of them would affect the rights and interests of the National Council. Hence the principle announced in *Clarke* v. *Kansas City*, 176 U. S., 114, and relied upon by the defendant in error in its additional brief, has no application here. For in this case the defences are not set up by one having "no interest in defeating" the antagonistic claim, or the objectionable statute. Here the National Council is injured by any feature of the statute under discussion which will injure the State Council, the subordinate councils, or the individual members of the latter bodies.

One ground, upon which the defendant in error seeks to uphold the statute, is that the exact name "State Council of Virginia," &c., could not be used in any other State. Such contention is without merit. The adopted name need not be an exact similitude. The question is always whether it so closely represents the earlier name as to mislead the public. The defendant in error adopted the name "Jr. O. U. A. Mechanics," which is the important and effective part of the name, adopted the declaration of principles of the National Order, although abandoning its objects. The statute, it succeeded in having enacted, declared that it is "supreme head of the Junior Order United American Mechanics in the State of Virginia. See

p. 64. The record shows that it attempted to mislead the public, and that it has done so, p. 131. It is too late now for it to seek protection behind the plea that its name is different from the name elsewhere used. Its use in Virginia is injuring the National Council by injuring the loyal subordinate councils.

The defendant in error also insists that the State of Virginia has a right to charter a corporation by a name in general use by another corporation throughout the United States.

This question was discussed in our first brief, and we shall add but a few words in addition on the subject.

We submit that a name should be regarded as an article of interstate commerce under proper conditions. Where a corporation is chartered with the expressed view of operating in several or all of the States, its name should be protected under the protection given to interstate commerce. Its name is one of the means by which it does business. In its inception it is not intended to be localized. From the beginning it is intended to be sent into the several States. In that it differs from any particular article which may be handled or manufactured by it, or from any special thing or act done in its operation. Like a trade-mark it is intended from the beginning to go beyond the limits of the State chartering the corporation.

The commercial world in this country is interested in this question. If it is to be law that a State can give to its citizens the name of a corporation theretofore chartered by another State for the purpose of doing business or operating in the several States, then we submit that property rights of enormous value are at stake and in jeopardy.

A State has no more right to take absolutely the property of a person residing in another State, no matter what may be the character of that property, than she has the right to tax the property of one of her own citizens, when that property is located in another State. As a constitutional question it is just as much a taking of property "without due process" in the one case as

in the other. In practical effect it is a greater wrong in the first case than it is in the latter. In the former the property is taken, in the latter a part of the value of the property is taken.

N. Y. Cen. Ry. v. *Miller*, 202 U. S. 584-596.

In *Louisville, etc., Ferry Co.* v. *Kentucky*, 188 U. S. on p. 397, this court quoting from Cooley in Con. Limitations, says, "a State can no more subject to its power a single person or single thing of property, whose residence or *situs* is in another State, than it can subject all the citizens or all the property of such other State to its power.

The defendant in error, in upholding the opinion of the Supreme Court of Virginia in this case, attempts upon pp. 5 and 6 of its additional brief to draw a distinction between "property rights" existing in the National Council and those existing in the defendant in error.

We submit that if the right of the defendant in error to receive future dues gave it "property rights" under the statute, then the right of the National Council to receive dues in the future created such property rights in the agreement between the National Council and the State Council, as to make it a "contract" even under the narrow construction of that word now insisted upon by the defendant in error—and that those property rights were violated by the authority, given to the defendant in error by the statute, to be an independent organization with the exclusive right to create subordinate councils.

The Supreme Court of Viirginia said that the right to create subordinate councils was a property right, and makes no mention of any dues to be paid to the State Council, p. 154. Not only this right primarily existed in the National Council, but the right also existed to say who should be the State Council, what power the State Council should have to create subordinate councils and who should use the name of the State Council. All these rights it is claimed can be taken away without violating any contract, because they involve no property rights—yet it

was held that the right to create subordinate councils was a "property right."

We submit that it must follow that there were property rights in the agreement between he National Council and the State Council.

But if that be not so, and if the National Council is a mere social organization for the advancement of moral, educational and political questions and principles, then we insist that the State could not prohbit our remaining in her limits—especially as the questions sought to be advanced were in great part National questions.

SMITH W. BENNETT,
ELLIS G. KINKEAD,
C. V. MEREDITH.

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No. 89.

BRIEF FOR DEFENDANT-IN-ERROR.

Supreme Court of the United States

OCTOBER TERM, 1906.

[redacted]

THE NATIONAL COUNCIL, JUNIOR ORDER UNITED AMERICAN MECHANICS OF NORTH AMERICA, ET AL., PLAINTIFFS IN ERROR,

vs.

THE STATE COUNCIL OF VIRGINIA, JUNIOR ORDER UNITED AMERICAN MECHANICS OF THE STATE OF VIRGINIA.

IN ERROR TO THE SUPREME COURT OF APPEALS OF THE STATE OF VIRGINIA.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1906.

No. 357.

THE NATIONAL COUNCIL, JUNIOR ORDER UNITED AMERICAN MECHANICS OF NORTH AMERICA, ET AL., PLAINTIFFS IN ERROR,

vs.

THE STATE COUNCIL OF VIRGINIA, JUNIOR ORDER UNITED AMERICAN MECHANICS OF THE STATE OF VIRGINIA.

BRIEF FOR DEFENDANT-IN-ERROR.

No brief having been filed on behalf of the plaintiff-in-error, we will first make a concise

STATEMENT OF THE CASE.

Before 1869, the order United American Mechanics existed in three states—Pennsylvania, Delaware and New Jersey. There was a state council in each of said states. In 1869, those three councils created a National Council, and the state councils accepted charters from said National Council. Subsequently state councils were created and charters

granted them by the National Council in many other states, including the State of Virginia.

The form of the charters granted by the National Council to the state councils is set forth in the record at pp. 125-6. By said charter the National Council, in substance, authorizes the state council to grant charters to subordinate councils of the order within their state, and to enact rules for the government of their council and of subordinate councils within their jurisdiction, subject however to the proviso that the state council act according to the order and in conjunction with, and obedience to, the National Council.

In the year 1893, the National Council, which before that date, had been unincorporated, was created and organized as a corporation under the laws of Pennsylvania, and since such incorporation, the national body has existed solely as an incorporated body under the charter granted to it by the State of Pennsylvania. See Rec. p. 55 Bill and p. 105 Answer.

The organization of the order has been, as follows:

(1) A National Council, a corporation as aforesaid of Pennsylvania, consisting of officials of the order and representatives of the state councils, acting under a constitution and by-laws;

(2) State councils in the several states consisting of certain officials and representatives of the subordinate councils; and

(3) Subordinate councils, by membership of which alone members enter the order.

The National Council was accustomed to hold annual sessions, and at the national session held in 1899 in Minneapolis the National Council undertook to make, and subsequently, to carry into effect certain changes in the constitu-

tion and by-laws of the order, which produced widespread dissatisfaction and revolt from the National Council, and led to the litigation involved in this case.

At the meeting in Minneapolis in 1899, the National Council undertook to change the constitution and government of the order in several particulars, viz , by altering the objects of the order so as to add an insurance branch for the benefit of the members of the order and their families; by making changes in the regalia of the order, in the National Judiciary, and in the basis of representation. Those who opposed the said changes contended that they, or some of them, were illegal and revolutionary, and that none of them were adopted in the manner required by the constitution of the order. Among the opponents of these changes were the state councils of New York, Pennsylvania, New Jersey, the District of Columbia and the State of Virginia, representing a very large majority of the total membership of the order. The National Council however persevered and refused any redress to their remonstrances and alleged grievances.

The State Council of Virginia, in view of this refusal applied to the General Assembly of Virginia in the year 1900, and on the 17th day of February, 1900, an act was passed by the General Assembly of Virginia creating certain named persons and all other members of the state council of Virginia and their associates a corporation under the name of the State Council of Virginia Junior Order of United American Mechanics of the State of Virginia, with the usual powers of corporations, and with the further provisions that said corporation should have power to make constitutions and by-laws for its government and for promoting the principles of the corporation, and full and exclusive authority to grant charters to subordinate councils of the order in Virginia, and to make constitutions and rules for the gov-

ernment of such subordinate councils; and that the said State Council should be the supreme head of the Junior Order of United American Mechanics in the State of Virginia. (See Act, p. 64, of Record.) The State Council of Virginia accepted the said act on March 14th, 1900, and the constitutionality of the said act is the sole question for review by this court.

The National Council, after the passage of said act, proceeded to grant a charter for a new state council in Virginia to certain persons in Virginia who still remained in sympathy with the National Council, which, on March 2nd, 1901, met at Alexandria, Virginia, and organized such new state council under the charter so granted by the National Council; and thereupon in July 1901, the State Council, incorporated as aforesaid by the General Assembly, filed the present bill in equity against the National Council, a corporation created by the laws of Pennsylvania, and against certain persons undertaking to act under its authority as its agents and representatives, being officers and members of the new state council organized on March the 2nd, 1901, at Alexandria, Virginia.

The bill set forth the various illegal and unconstitutional acts claimed by the plaintiff to have been done by the National Council, which formed the motive for its applying to the General Assembly for an independent and exclusive organization in Virginia, set forth the passage of the act incorporating the plaintiff and its organization under said act of incorporation, and the infringement of the rights and privileges granted the plaintiff by the said act of the Virginia legislature by the National Council and the new state council as the agent and representative of the National Council in the State of Virginia, and prayed injunctions against the said National Council and the said new state council to prevent the continued infringement of the rights

and privileges granted to the plaintiff by the said act of incorporation.

The National Council filed its answer to said bill on the 8th day of April 1902, in its own behalf and in behalf of the other defendants named in the bill of complaint "who are its agents and representatives acting under its law and authority, being officers and members of the State Council of Virginia, Junior Order United American Mechanics, created by this respondent March 2nd, 1901." See record p. 104.

In said answer the National Council set up various defences, none of which are open to review by this Court, save and accept the following:

(1) That said act of Feb. 17, 1900, is in violation of Article I, Section 10, Paragraph 1, of the Constitution of the United States, declaring that no state shall pass any law impairing the obligation of a contract.

(2) That said act is in violation of Section 1 of the Fourteenth Amendment of the Constitution of the United States declaring that no state "shall deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

The other defendants named in the bill filed on the same day separate answers adopting in full as their answers the answer filed by the National Council. See Rec. p. 117. Both the answer of the National Council and the other answers prayed that they might be treated as cross-bills.

The Chancery Court of the City of Richmond, being of opinion that the said act of assembly was constitutional, granted injunctions against the defendants as prayed in the bill on July 21st, 1904; and from this decree an appeal was taken to the Supreme Court of Appeals of Virginia, and the

decree of the Richmond Chancery Court was in substance affirmed by the Supreme Court of Appeals of Virginia by decree rendered on June 16th, 1905, and from said decree this writ of error has been taken.

Errors Assigned.

The errors assigned by the plaintiff in error are all involved in the contention that the act of General Assembly of Virginia of February 17th, 1900, is unconstitutional and void, and that the Supreme Court of Appeals of Virginia erred in holding—

(1) That the said act did not impair the obligation of any contract to which the plaintiffs in error were parties, and

(2) Did not deprive the plaintiffs in error of life, liberty or property without due process of law, nor deny to them the equal protection of the laws.

The several errors assigned all reduce themselves to these two propositions and are the only ones subject to review by this court in this proceeding.

Argument.

These being the questions involved, we will proceed to present succinctly our views upon them.

The plaintiffs in error, who were the defendants in the court below, are the National Council Junior Order of United American Mechanics of the United States of North America, a corporation created by, and existing under the laws of the State of Pennsylvania, and thirteen other defendants, officers and members of the State Council of Virginia created by said National Council and organized at Alexandria on March 2nd, 1901, who are the agents and

representatives of the National Council acting under its laws and authority, and as such were sued, answered and decreed against. (See printed record pp. 138-9 and 155.)

The sole question then presented by this record is, whether the act of Assembly of February the 17th, 1900, unconstitutionally prejudiced the rights of the National Council, a foreign corporation in Virginia or of persons acting under its laws and authority as its agents and representatives in Virginia.

We maintain—

(1) That the National Council being a corporation of Pennsylvania, had no right to exist or carry on any operations in Virginia except at the mere pleasure of the latter state, and that persons acting under its authority as its agents and representatives had no larger power than the corporation that they represented; and that, accordingly, such foreign corporation and its agents cannot complain of the act of February the 17th, 1900, which excluded them from further existence or operations in Virginia by giving to the "State Council of Virginia" created by that act exclusive authority to grant charters to subordinate councils and to make rules for the government of the order in Virginia, and also made said "State Council" the supreme head of the order in Virginia, thus excluding the foreign corporation from further action within that state.

(2) That no contract has been pointed out, or can be pointed out, by the plaintiffs in error, the obligation of which has been impaired by the act of February 17th, 1900.

(3) That the said act of February 17th, 1900, does not deprive the National Council and the other defendants, its agents and representatives, of liberty or property without due process of law, nor deny to the said council, or its rep-

resentatives within the jurisdiction of Virginia equal prol tection of the laws.

(4) That the existence and operations of the Nationa- Council, a foreign corporation, in Virginia were at all times subject to the right of the State of Virginia, at any time at its mere pleasure to exclude or prohibit it from continuing to exist or operate in said state; that the act of February 17th, 1900, by granting supreme and exclusive authority to the "State Council" thereby created, necessarily excluded the National Council from continuing to operate directly or through its agents in Virginia; that the said act was prospective in its provisions, and in no way affected rights or property acquired by said National Council in Virginia prior to February 17th, 1900, and that personal or property rights accruing prior to that date were in no way affected by said act or involved in the pleadings in this cause; and that the Supreme Court of Appeals of Virginia, from abundant caution, expressly provided that nothing contained in the decree of the Chancery Court, as affirmed by it, "shall in any wise interfere with any personal or property rights which may have accrued prior to the 17th day of February, 1900." See Rec. p. 155.

It cannot be needful, we respectfully submit to adduce any very elaborate argument or to cite much authority in support of these propositions. In the first place, in the absence of the brief of the plaintiffs in error, we beg to call the attention of the court to several matters which we think are not involved, and cannot be properly considered, in this case. No personal or property rights are here involved, but solely rights of headship and control claimed by the National Council, a Pennsylvania corporation, on behalf of itself and on behalf of the other defendants acting under its authority as its agents. No rights beyond these were involved in the original bill, nor in the answer which was

treated as a cross-bill, nor in the decrees rendered by the State Courts. It is plain that the pleadings and decrees below in no way involved any personal or property rights but only involved, enforced and gave effect to (what may be called) the governmental rights and control of the defendant in error over the order in Virginia from and after the date of the passage of the act of February 17th, 1900.

The complaint then, and the only complaint, that can now be made, is that the National Council, under and by virtue of the act of February 17th, 1900, is prohibited by the court below from acting as the supreme head of the order in Virginia, from granting charters to subordinate councils in Virginia, and from exercising governmental control over the order within that State. This being so, we are at a loss to perceive wherein any right secured to the National Council by the Constitution of the United States is infringed by the act of the General Assembly of Virginia.

The contention that the charter which was originally granted by the National Council to the original State Council in Virginia constituted a contract under the protection of the Federal Constitution, is, we think, wholly without support. In the first place, the said charter did not constitute a contract; but was merely an instrument used in the organization and government of the order, and in no way created contractual relations. Under such charter, the State Council, being merely an unincorporated association, was not capable of assuming contractual obligations, and did not undertake to do so; indeed, by the very frame and constitution of these fraternal associations, it is universally established that the membership of them may be abandoned, and the order may thus become terminated by the voluntary resignation of its members, and accordingly such associations are styled voluntary associations. The so-called charter, therefore, in establishing a relation, only created

an obligation that continued binding so long as the relation lasted. The continuance of that relationship could not be compelled by any decree for specific execution, nor could the severance of it be redressed in any action for damages. The most that could be said, and the furthest extent to which the courts have gone is, that funds or property acquired while the relation continues may be impressed with a trust which may be enforced in a proper case by the courts of equity. But in the present case no question of that kind is presented. It is plain, we think, that the relation of control and subordination alleged to be created by the charter originally granted by the National Council in no way implied a contract for its perpetual continuance, nor gave rise to any rights of continued control, enforceable in any court especially against the will of Virginia.

The counsel for the plaintiffs in error have never defined what contract, enforceable by the process of the courts, was violated by the act of February 17th, 1900; and they having heretofore failed to put their finger upon any such contract, we respectfully submit we are justified in confidently affirming that no such contract ever arose.

In addition, the provision of the Federal Constitution in respect to state legislation impairing the obligation of contracts, has always been limited by the Supreme Court of the United States and applied only to cases of contracts creating some right in respect to property or subjects of pecuniary value.

In *Butler* vs. *Pennsylvania*, 10 Howard, 402, 416, it was said:

"The contracts designed to be protected by the tenth section of the first article of that instrument are contracts by which perfect rights, certain, definite, fixed, private rights of property are vested."

In *State of Maryland* vs. *Baltimore & Ohio R. R. Co.*, 3 How. 534, this court distinguished between general regulations of society and matters of private right giving rise to interests which could be maintained in a court of justice.

In *Stone* vs. *Mississippi*, 101 U. S. 814, Waite, C. J, says:

"The contracts which the constitution protects are those that relate to property rights, not governmental."

In *Maynard* vs. *Hill*, 125 U. S. 210, this Court says:

"As was said by Chief Justice Marshall in the *Dartmouth College Case*, not by way of judgment, but in answer to objections urged to positions taken: 'The provision of the Constitution never has been understood to embrace other contracts than those which respect property or some object of value, and confer rights which may be asserted in a court of justice. It never has been understood to restrict the general right of the legislature to legislate on the subject of divorces.'"

Compare *Hunt* vs. *Hunt*, ~~131~~ U. S. Law ed B 24 L 1109

Black on Constitutional Prohibitions, page 51, Section 4, says:

"The Constitution was intended to apply, and does apply only to private rights of property and private contracts."

The following appears as part of the syllabus in *Trustees of Bishop's Fund* vs. *Rider*, 13 Conn. 87:

"A contract within the Constitution of the United States, Art. I, Section 10, is one relating to property or some object of value, which imposes an obligation capable in legal contemplation of being impaired."

These citations might be indefinitely multiplied, and they plainly show that there is no contract involved in the pres-

ent case within the protection of the federal Constitution. Even if there were a contract of that nature, it was made subject to the inherent reserved power of the State of Virginia at any time to pass an act of the nature of that of February 17th, 1900, excluding the National Council from further operation, through its agents, within the State of Virginia.

Paul vs. *Virginia*, 8 Wall. 168.

Ducat vs. *Chicago*, 10 Wall. 410.

Pembina Silver Mining Co. vs. *Pennsylvania*, 125 U. S. 181.

Hooper vs. *California*, 155 U. S., 648.

Missouri vs. *Dockery*, 191 U. S. 165.

Travelers Life Ins. Co. vs. *Insurance Commissioner of the State of Conn*, ————————, recently decided by this Court. 202 U S 246

Lehigh Valley Co. vs. *Hamlin*, 23 Fed. Rep. 225, per Judge Gresham.

Manhattan Life Ins. Co. vs. *Warwick*, 20 Gratt. 614.

Slaughter's Case, 13 Gratt. 767.

The only privilege conferred by the act of February 17th, 1900, upon the corporation created by that act was that of corporate existence and the privilege of being the supreme head of the order in Virginia, with the exclusive right to grant charters to subordinate councils of the order, and to prescribe the rules for their government. The only privileges which it took away from the National Council were the privilege of being the head of the order in Virginia and of acting in that State through its representatives. There was no other function which the National Council could exercise in the State of Virginia of which it was deprived by the said act; and the authorities above cited, we respectfully submit, settle the proposition that it was only by the comity of Virginia that the National Council had ever op-

erated through its agencies within Virginia, and that the General Assembly of Virginia had the right and power at any time at its mere pleasure to withdraw these privileges and, of course, therefore, to confer them upon some other body selected by it. See the *Mormon Church Case*, 136 U. S. 1.

We repectfully submit that this is the whole case presented in this writ of error.

We are not informed what positions will be taken by the learned counsel for the complainants in error, and do not undertake in advance of their presentation to imagine what points they will urge in support of the writ of error; but whatever may be the propositions which they may advance we believe, and will respectfully submit, that all of them in the nature of things will and must relate solely to matters which are not within the jurisdiction or cognizance of this Court in this proceeding.

And we therefore respectfully submit that the decree below must be affirmed.

SAMUEL A ANDERSON,
FRANK W. CHRISTIAN,
Counsel for Appellee.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1915.

No. 6.

THE NATIONAL COUNCIL, JUNIOR ORDER UNITED AMERICAN MECHANICS OF NORTH AMERICA, ET AL., PLAINTIFFS IN ERROR,

vs.

THE STATE COUNCIL OF VIRGINIA, JUNIOR ORDER UNITED AMERICAN MECHANICS OF THE STATE OF VIRGINIA.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1906.

No. 89.

THE NATIONAL COUNCIL, JUNIOR ORDER UNITED AMERICAN MECHANICS OF NORTH AMERICA, ET AL., PLAINTIFFS IN ERROR.

vs.

THE STATE COUNCIL OF VIRGINIA JUNIOR ORDER UNITED AMERICAN MECHANICS OF THE STATE OF VIRGINIA.

Addition to Brief filed on October 27, by Defendant in Error

Since printing the foregoing brief, the plaintiffs in error have, on October 22nd, 1906, filed their brief to which we will endeavor to reply briefly. The best reply which we can make is to state briefly what the case was in the court below, who the parties were, and what the decree was.

Differences having arisen in the order in consequence of the action of the session in 1899, at Minneapolis, and the then existing State Council of Virginia having, along with the State councils of several other states, representing a large majority

of the members of the order, bitterly opposed the changes adopted at that session, determined to apply for a charter from the State of Virginia, and such charter was granted them on February 17th, 1900, by which they were made the supreme head of the order in Virginia and given exclusive power and jurisdiction to grant charters to subordinate councils in that State.

A new State council was thereupon organized at Alexandria, Virginia, by persons who were agents and representatives of the National Council acting under its laws and authority. Thereupon the corporation chartered by the Legislature brought its bill alleging that the National Council and thirteen individuals who were said to be acting in league and sympathy with them and had organized the new State council at Alexandria, to enjoin them from further interference with the plaintiff in carrying out its functions and duties under the act of Legislature under which it was chartered. In this bill, the corporation chartered by the Legislature of Virginia was the sole plaintiff, and the National Council and the thirteen individuals who were in league and in sympthy with the National Council and had organized the new State Council at Alexandria, Virginia, and other unknown persons who had done the same things, were sole defendants.

The bill thus in effect charged that the individual defendants were the agents and representatives of the National Council and acting under its authority; and this fact was directly and expressly averred in the answer filed by the National Council, which was adopted by each of the thirteen individual defendants. This, of course, was equivalent to a direct averment of that fact in the bill.

In 1st Daniel's Chancery Practice, page 407, it is said:

> "Where an answer of a defendant states facts which are material to the plaintiffs case but

> which have not been stated in the bill, it is not necessary that the plaintiff, in order to avail himself of them at the hearing, should introduce such facts into his bill by amendment, although perhaps, the most convenient course would be to do so."

This principle was approved in *Rossett* vs. *Fisher,* 11 Gratt. 492, 502, citing *Wood* vs. *Dummer,* 3 Mason Reports, 308, and other cases.

The issues, therefore, of this case were between the State Council, incorporated by the act of the Virginia Legislature on one side, and the National Council and its agents and representatives on the other.

The National Council was then in effect the only party defendant, and its rights only were involved in the issues in the case, and the decree of the Chancery Court and of the Supreme Court of Appeals of Virginia dealt with no other rights or interests.

The claim that the rights of individual adherents to the National Council are abridged by the decree in this case is misconceived. Similar claims have been made in prior cases in this court, but we believe always rejected. In *Bank of Augusta* vs. *Earle,* 13 Peters 587, cited with approval in *Paul* vs. *Virginia,* 8 Wall. 180, it was said:

> "Whenever a corporation makes a contract, it is the contract of the legal entity—the artificial being created by the charter—and not the contract of the individual members. The only rights it can claim are the rights which are given to it in that character, and not the rights which belong to its members as citizens of a State."

This disposes of all that is urged in the brief of opposing counsel touching any rights of individual adherents to the National Council supposed to have been violated by the statute or decree in this case.

No rights of individuals were involved in the issues in these causes; and it is a well settled principle, as was said in *Foster* vs. *Goddard,* 1st Black, 506, 518:

> "A party can no more succeed upon a case proved but not alleged, than upon a case alleged but not proved."

It being well established that averments without proof, and proofs without averments, are equally unavailing.

This consideration effectually disposes of any supposed rights of individuals, or of the Lovettsville Council, none of whom were parties to this cause, and as to whom no issue was made in the pleadings. The decree of July 21, 1904, as to defendants other than the National Council affects them only as agents and officers of the National Council and in no other capacity. Rec. top p. 139.

The foregoing is preliminary to the further position that we take, that most of the objections made by opposing counsel in their brief to the decree of the court below, are objections which do not concern the National Council, whose rights alone were adjudicated in the court below; and, therefore, such objections cannot be raised by the National Council which is, in substance, the only appellant here, for the other individual appellants were parties only as agents of the National Council acting under its authority.

In *Clark* vs. *Kansas City,* 176 U. S. 114, quoting from Cooley's Const. Limit. 5th Ed. top page 197, this court said:

> "A court will not listen to an objection made

> to the constitutionality of an act by a party whose rights it does not affect, and who has therefore no interest in defeating it, i. e., a legal interest in defeating it. The objection of unconstitutionality of a statute must be made by one having a right to make it, not by a stranger to the grievance. 'To this extent only is it necessary to go in order to secure and protect the rights of all persons against the unwarranted exercise of legislative power; and to this exten only therefore are courts of justice called on to interpose.'"

Quoting Wellington, Petitioner, 16 Pick. 87, 96. See also *Lampasas* vs. *Bell,* 180 U. S., 283-4; *Tyler* vs. *Judges,* 179 U. S. 405; *Supervisors* vs. *Stanley,* 105 U. S. 313, 314.

The foregoing consideration will dispose of most of the points made by opposing counsel in their brief, since it does not lie in the mouth of the National Council, the only substantial party to the record, to set up constitutional objections by which it is not affected or injured.

Before passing to the special heads of argument embraced in the brief of opposing counsel, we wish to incidentally notice the rather unpleasant criticism upon the opinion rendered in this case by the honorable Supreme Court of Appeals of Virginia. This criticism springs, we think, from a failure to distinguish between property rights which had been acquired and vested at the date of the passage of the Virginia statute of February 17th, 1900, and rights subsequently accruing. The decree below in no way interferes with such property rights as had accrued prior to February 17th, 1900; but the court holds that the possible pecuniary rights which, but for the passage of that statute, might have been acquired by the National Council, were not property rights, for the

reason that their acquisition would depend upon the continued existence and operation of the National Council within the borders of Virginia, which the State of Virginia had a right to prohibit at any time. But the property rights which would sustain the jurisdiction of a court of equity in granting an injunction, which necessarily operates in the future, would depend upon entirely different principles. The mere fact that the complainant was a corporation created by the Legislature of Virginia, with powers under which it may at the hearing have already acquired pecuniary rights, or by which it was vested with capacity to thereafter acquire pecuniary rights, was sufficient to constitute rights of property within the protective powers of a court of equity. This distinction, we think, fully explains the supposed contradiction in the opinion of the Supreme Court of Appeals of Virginia.

I.

Opposing counsel in their brief contend that the Virginia statute is unconstitutional, because it took from the National Council the right to continue to use, through its subordinate appointee, the voluntary association, the name "State Council of Virginia, Junior Order United American Mechanics."

The Legislature of Virginia, in the exercise of its sovereign rights, having determined for reasons satisfactory to itself to prohibit the National Council from continuing to exercise its functions as the supreme head of the order in the State of Virginia, passed the statute of February 17, 1900, by which it created a corporation to be the supreme head of the order in Virginia with exclusive power to grant charters to subordinate councils in lieu and stead of the National Council. The Legislature of Virginia had the right and power thus to prohibit the foreign corporation from continuing the exercise of its functions in Virginia, and the Legislature in so doing follow-

ed the established power laid down by this court. Obviously, if nothing more than this had been done, there would have resulted confusion; and in order to prevent confusion and to advance the public welfare, the Legislature declared that the new State Council so incorporated by it should be the supreme head of the order in Virginia with exclusive power to grant charters to subordinate councils as had been formerly done by the National Council.

In thus enacting, the Legislature necessarily forbade the old voluntary association, the appointee of the National Council any longer to exercise its functions under the authority of the National Council in Virginia; and that voluntary association, of course, therefore, had no further use or right to the name in question; and the Legislature in the exercise of its sovereign power gave the name formerly used by such voluntary association to the new corporation created by it. This name had never been used, and was not capable of being used, outside of the limits of Virginia. The association was one organized for benevolent and (if opposing counsel prefer) for political purposes; but it was not organized for any commercial purpose, and had never used its name for any such purpose. Its name had never been used as a trade-mark or a trade-name in any way, and had never been affixed to goods or property capable of transportation into or beyond the State of Virginia, and no good will had ever attached thereto. The voluntary association, having come to an end with the passage of the act in question, and the National Council having been prevented by the act from further exercise of its functions in the State, there was no one by whom the name could be used save by the new corporation created by the act. The name was to be used in Virginia alone, and could not be used beyond the borders of the State, for the name was one that was not being used, or capable of being used, in commerce either within the State or beyond the State.

We respectfully submit, that no case can be found holding that the right to use the name under those conditions is property in any sense, or beyond the control or disposition of the Stat Legislature. These two features, viz: (1) That the corporation in this case was not a business, commercial or trade corporation, and (2) That the name was not shown to be used, and in fact was not used or capable of being used, as a trade-mark and trade-name outside of Virginia, or that any "good will" was attached or capable of being attached to the use of said name; but that the right given by the decree below to the use of the name was limited to the State of Virginia,—distinguish this case from the principles or authorities relied upon by the learned opposing counsel.

The case of *Lehigh Valley Co.* vs. *Hamblen*, 23 Fed. Rep. 225, decided by Judge Gresham, goes a bowshot beyond the principle for which we are here contending. In that case, the Lehigh Valley Company was a corporation of Pennsylvania engaged in mining coal in Illinois, and had an agency at Chicago where it owned real estate and had on hand coal worth $400,000. The defedants were proceeding to organize a new corporation under the same name under the laws of Illinois, and an injunction was asked to prevent their doing so. In that case, the Judge thought the defendants' motive was improper, and said that it was with extreme reluctance that he denied the relief prayed for. He observed, however:

> "The plaintiff is a foreign corporation, and it is only by comity it is doing business in Illinois at all. The State can say to it at any time 'go,' and it must go. That being so, I do not see that the plaintiff has a legal right to say a corporation shall not be created in Illinois bearing its (the complainants') name. If the State of Illinois

> may create a corporation bearing the same name as the complainant—and it certainly can—this court has no right by injunction to prevent anything from being done under the State law which is necessary in the creation of such a corporation."

The act of February 17th, 1900, as construed by the Virginia Court of Appeals does not undertake to interfere with vested rights either of property or persons. It is prospective only in its operation, and the decree of July 21st, 1904, does not interfere with vested rights. The loss of revenue, if any, which the National Council will sustain, if effect be given to said act, will be future loss of revenues subsequent to the act, and will result from the fact that the National Council is kept out of Virginia by the act of February the 17th, 1900—a thing which the Legislature had the perfect right to do. The National Council is in no way prevented from using its name, seal or ritual, or collecting its revenue in those states where it can lawfully do business as a corporation. The answer of the National Council does not show, or pretend to show, in what way the use of the name "State Council of Virginia, Junior Order United American Mechanics" by the defendant in error in the State of Virginia will diminish any of the revenue to which it has been entitled, or may hereafter be entitled, from carrying on its work in those states where it may lawfully operate. At common law, there can be no vested right in a name, except in connection with a trade or business affecting rights of property. 16 Am. & Eng. E. of Law, 1st Ed. page 118; 28 Am. & Eng. Ency. of Law, 2nd Ed. page 389; *Duboulay* vs. *Duboulay*, 2 Law Report Privy Council Appeals, page 432; *Day* vs. *Browning*, 10 Chancery Div. 294.

In *Duboulay* vs. *Duboulay*, 2 Law Report Privy Council Appeals, Lord Chelmsford says on page 441:

> "In this country, we do not recognize the absolute right of a person to a particular name to the extent of entitling him to prevent the assumption of that name by a stranger. The right to the exclusive use of a name in connection with a trade or business is familiar to our law."

Opposing counsel cite and quote many cases in support of proposition I in their brief. Most of them will be found cited in their petition for an appeal to the Supreme Court of Appeals of Virginia, and were considered by that court. Within the limited time which we have for the preparation of this brief we cannot undertake to discuss them and distinguish them (as might very easily be done) from the present case. We believe, however, that in none of them was the constitutionality of an act of the Legislature and the power of a Legislature to exclude from a State a foreign corporation involved or discussed.

In reply to the numerous authorities cited on page 37 of the brief of opposing counsel in support of their contention that the act of February the 17th, 1900, is in contravention of the Virginia Constitution, it is only necessary to remark that the decision of the Supreme Court of Appeals of Virginia in the present case is conclusive against the contention of the learned opposing counsel on that question.

II.

The next proposition claimed by the learned opposing counsel is, that the statute violates the contract clause of the Federal Constitution, because it violated some contract contained in the conventional charter granted by the National Council to the State Council, a voluntary association. In our prior note, we have pointed out that the conventional charter did not establish a contract, but merely a relation or status. The plaintiffs in error still maintain that a contract is created; but we respectfully submit, they fail to indicate in what respects that conventional charter gave rise to a contract. The nominal parties to the conventional

charter were the National Council and the State Council. As the latter was a voluntary association, and not a legal entity; and as a contract presupposes competent contracting parties, the conventional charter could not be deemed strictly a contract. If it be replied that though the voluntary association might not be legally competent in its character as such to make a contract, nevertheless the individuals joining the order became parties to the said contract; we reply, that such contract, if it can be said to be one, created still only a status or relationship, which was terminable at the pleasure of the individuals joining the order. It is plain that there is no such action or process of the courts which can be used to compel such members to remain members of the order. Anson, a distinguished writer on contracts, says, page 3:

> "The intention of the parties must refer to legal relations. The assumption of legal rights and duties must be the object of agreement, as distinguished from a dinner engagement or a promise to take a walk. For the purposes of English law we may take it, as a test of this reference to legal relations, that the intention of the parties must have to do with something which is of some value in the eyes of the law, something which can be assessed at a money value."

Such conventional agreement was, of course, terminable, unless there had been an express provision to the contrary; which there was not. The contract between master and servant, between principal and agent, between co-partners, each establishes a relationship which, while it exists, may give rise to rights; but either party is at liberty to terminate the relationship at pleasure, unless the contrary is expressed. Even the contract of marriage is not an exception; for there the contract in terms declares it shall subsist "until death do us part."

We are confident that no respectable authority can be found countenancing the idea that such an arrangement as this can be enforced as an agreement for a continuing relationship, and be made the ground for the recovery of damages in any court, or be

considered as a contract within the protection of the Federal Constitution.

The relationship, of course, involved the idea of subordination to the National Council as long as the parties adhered to that relationship. It was, doubtless, incumbent upon them to observe that subordination so long as the relationship continued; and property rights acquired during the continuance of that relationship, enforceable by the courts, might come into existence; but it is quite another thing to contend that such relationship was perpetual and could not be severed by the parties, and therefore was beyond the power of interference by the Legislature of the State. Bacon Ben. Sec., Section 111.

In point of fact, when the conventional charter was granted, it was granted subject to the sovereign power of Virginia at any time to prevent the further control or interference of the National Council in the State of Virginia, and the parties must be presumed and held to have entered into such arrangement subject to the exercise of this sovereign power of Virginia at any time thereafter she might see fit.

In the case of *National Council, J. O. U. A. M.* vs. *State Council of New Jersey*, 64 N. J. Eq., page 473, the court decided that a conventional charter granted in this order by the National Council to the State Council of New Jersey did not create contractual relations; and Pitney, V. C., said:

> "It must be borne in mind that the relation between the parties, *i. e.*, the relation between the National Council and the State Council, is a purely voluntary one."

The Court of Errors and Appeals of New Jersey in 66 N. J. Eq. R., page 429, affirmed the decision of Vice-Chancellor Pitney and adopted his opinion as the ground of their affirmance.

> See also Bacon Ben. Sec., Section 111; *Austin* vs. *Searing*, 16 N. Y., 112; *Jose Paulino* vs. *Portugese Beneficial Association of Rhode Island*, 20 L. R. A., 272; *Landford* vs. *Deems*, 81 N. Y., 514.

In support of their contention under this second head, opposing counsel cite as their leading authority the case of *Kain* vs. *Arbeiter, &c.*, Verein, 102 N. W., 746, in which the court adds the clause hereinafter italicised by us to the sentence quoted by opposing counsel in their brief, which words show the grounds upon which that decision proceeded.

In that case members of a local association or bund sued to enjoin the local society from paying a benefit certificate of $500 in value issued by the principal association or bund claiming that such certificate ought to be paid by the principal association. A continuation of the paragraph in the opinion from which the learned opposing counsel have quoted on page 39 of their brief is as follows:

> "Both the State (Art. 4, Sec. 43) and the Federal (Art. 1, Sec. 10) Constitutions prohibit laws impairing the obligation of contracts, and under the latter the State is forbidden to deprive any person of property without due process of law. These rules form a part of the laws of the United States and of this State within the meaning of the above statute (*i. e.*, a statute incorporating the local bund). General powers to make changes in the constitution and by-laws will not authorize amendments which materially impair *prior insurance contracts* or change the scheme of insurance." (Italics ours.)

Such were the grounds upon which that decision proceeded, and it is perfectly manifest that the case is not pertinent to the case under argument. We think all other cases cited by opposing counsel could be shown to be inapplicable to this case if we had the space or time to do so.

Learned opposing counsel refer to the famous case of *Dartmouth College* vs. *Woodward*. That case, however, supports our contention. It was an action of trover for property in which the judgment of this court was for a large sum of money. The judges, who concurred in that case in holding the act of the New Hamp-

shire Legislature invalid, admitted that the provision of the United States Constitution forbidding a State to pass any law impairing the obligation of contracts applied only to contracts respecting property and conferring rights which could be asserted in a court of justice.

And the subsequent cases decided by the Supreme Court of the United States, all hold the same doctrine.

Opposing counsel do not point out any contract of this nature, or indeed any contract at all that is violated by the act incorporating the complainant.

Opposing counsel's argument, as we understand it, is that individuals joined the subordinate councils which, at the time they united themselves with them, were subordinate to, and under the control of, the National Council, and that the Legislature had no right to dissolve this relationship and compel them to be under the supreme control of the State Council.

We respectfully submit that this argument has no force. When members of the order joined subordinate councils, which at that time were subject to the control of the State Council, and in turn to the supreme control of the National Council, they did so subject to the right of the Legislature of Virginia at any time to exclude the National Council from all operations in the State and to deprive it of the control of the order in Virginia. The Legislature had this power and the right to exercise it at any time; and every member of the order who joined a subordinate council joined it subject to this sovereign right in the Legislature to change this supreme control at any time it saw fit, and, consequently the relationship of the members to the National Council.

III AND IV.

The propositions treated by opposing counsel under heads III and IV, may be considered together. They are, that the act of February the 17th, 1900, violates Section 1, of the 14th Amendment, which provides:

"Nor shall any State deprive any person of life, liberty or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

If we are right in what we have contended for, the State has not deprived the defendant of liberty or property, without due process of law; and the act of February the 17th, 1900, is consequently not subject to this part of this prohibition.

As to the branch of their argument in which opposing counsel claim that the act of February the 17th, 1900, has deprived the defendant of the equal protection of the laws, we are at a loss to know upon what ground they base this contention. Apparently, the only ground for this contention is, that in 1898, the State of Virginia passed a statute providing the conditions under which beneficial societies might carry on the business of life insurance in the State. It is not shown that the plaintiff in error has ever conducted any life insurance in Virginia even among its own members. The 9th section of the act of 1898, according to the opposing counsel's own statement (see page 12 of their brief), provided that "Nothing in this act shall be held to affect or apply to grand or subordinate lodges of Masons, Knights of Pythias, Odd Fellows, Red Men, Junior Order of United American Mechanics, or similar orders that do not have as their principal object the issuance of benefit certificates to members."

The opposing counsel repeatedly say in their brief, that the effect of this act was to invite the Junior Order United American Mechanics, under the headship of their National Council, to remain and continue in operation in the State; and from this the counsel seek to infer an estoppel against the State of Virginia ever changing its mind or passing any act to prevent the National Council from continuing to operate in the State.

It is unnecessary to say that the act in question by its terms in no way applied to or affected the National Council; that it in no way operated as an invitation to the National Council to come into the State or to remain in the State; and even if the act had

invited the National Council to remain in the State, it is plain that that would not have estopped Virginia from changing her mind and prohibiting the National Council thereafter from continuing to operate in the State or from operating in the State, except upon such conditions as the State might prescribe. We do not think this power of the State could be surrendered by the State of Virginia by a mere license or permission without consideration; and we think it must be plain that if such power existed, no such estoppel has been either set up in the pleadings or shown to have arisen against the State of Virginia.

Opposing counsel further contend that it was a denial of equal protection, for the reason that Virginia passed the act of February the 17th, 1900, as to the National Council without passing similar acts as to all other associations mentioned in the 9th section of the act of 1898.

The constitutional provision has never been held to prevent special legislation. There is no averment in the pleadings showing the alleged discrimination complained of. If no such act has ever been passed as to other beneficial societies in the State, it may well be because the legislature thought no ground existed for the passage of such an act in respect to them. It must be wholly unnecessary to show to this court that Virginia can exclude one foreign corporation from its borders without excluding all other foreign corporations at the same time. Such action would plainly not be a denial of equal protection. If the plaintiff-in-error considered that there had been a denial of equal protection, it was incumbent upon it to allege the specific facts showing such discrimination. It may well have been that the differences which had arisen in this order in respect to its proceedings at the Minneapolis session in 1899, formed a reason why the legislature passed the act of February the 17th, 1900, or it may be that the legislature considered that it was contrary to the public welfare that this corporation should advocate in the limits of Virginia the principles it professed in respect to the restriction of foreign immigration or the reading of the Bible in the public schools; and, therefore, determined to prohibit its continuance to operate in the State and ap-

pointed another corporation as the head of the order with those two principles omitted.

V.

The next objection made by opposing counsel in their brief is, that the act of February the 17th, 1900, constitutes an unwarranted abridgment of the privileges of the members of the National Council as citizens of the United States.

This objection to the constitutionality of the act was not made in the court below. No reference was made in that court to the language of section 1 of the 24th amendment.

> "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States."

But the answer only referred to that part of section 1 of the 14th amendment which follows the language just quoted. (See Record, Top Page 113). This, we think, is a sufficient answer to the objection.

We must suppose that the objection under this head is, that the act of February the 17th, 1900, abridges the rights of individual members of the National Council in their character of citizens of the United States. This court in the Slaughter House Cases, 16 Wallace 36, distinguished between the rights which a citizen might be entitled to as a citizen of a State, and rights to which a citizen might be entitled as a citizen of the United States; saying, that the rights in the former character, except so far as specifically protected by special provisions of the federal constitution, were left as before to the guardianship and protection of the several states, and that the rights of a citizen of the United States as such alone were under the direct guardianship and protection of the United

States. In that case, the court declined to define exactly what constitute the rights of a citizen of the United States, but they did mention or enumerate some; such as the right of access to the seat of government; the right to peaceably assemble and petition for the redress of grievances; the privilege of the writ of habeas corpus; the right to use the navigable waters of the United States; rights secured by treaties with foreign nations, are named as some of the rights or privileges of citizens of the United States; but none named or suggested by the court can be held to embrace any right such as is claimed in the brief of opposing counsel in the present case.

Under this head, counsel seem to contend that foreign corporations have a right under the federal constitution to enter other States without the consent of such last-named States, provided the corporation is of some nature that involves for the most beneficial exercise of its functions operation in a great number of States. Of course, we recognize that a corporation, if it is in the employ of the federal government, or if it is engaged in interstate commerce, cannot be excluded from a State, because by special provisions of the federal constitution it is protected from such exclusion or interference. But these are the only two classes of corporations which this court has ever held to be beyond the power of exclusion by the State: See 125 U. S., 190, and the uniform decisions of this court have been to the effect that all other foreign corporations, being the creations of the sovereignty by whom they were created, can only enter other States by comity, and cannot operate in other States except with their consent and under such conditions as they may see fit to impose.

Opposing counsel, on page 49 of their brief, seem to suppose that this doctrine rests "upon the theory that a State has a right to declare what kind of business shall be done within its limits and by whom it may be done."

We deny that the power of a State to declare that a

foreign corporation shall not enter its limits is founded upon that theory. In *Paul* vs. *Virginia*, 8 Wallace 168, this power of a State was expressly based, not upon the fact that a State had the right to declare what kind of business should be done within its limits, but upon the fact "that a corporation is not a citizen within the meaning of that provision of the constitution, which declares that the citizens of each State shall be entitled to all the privileges and immunities of citizens of the several States."

It is clear that this reason for the power of the State to exclude a foreign corporation from its limits, applies with as much force to the National Council as to any other foreign corporation. See 8th Wallace, p. 168, and *Bank Augusta* vs. *Earle*, 13 Peters.

We also deny that the court can look beyond the National Council to its individual members and in a suit to which the National Council is a party to set up any supposed rights of its members if such members would have any such rights in a suit brought by themselves, which we also deny.

The so-called right of association, if any such right exists at all, does not spring from the federal constitution, but is under the guardianship of the several States and can only be derived from their constitutions, except so far as such right may be granted by a special provision of the federal constitution.

VI.

Opposing counsel further contend that the rights involved here are not only those of the National Council, but also the State Council, a voluntary association, and of the Lovettsville Council, a corporation of Virginia, and of other voluntary associations forming subordinate councils composed of citizens of Virginia.

Our answer under this head is two-fold: In the first place, we do not perceive that any rights of such members of the Lovettsville Council, or any of the other persons named, have been violated by the statute or decree below; and in the second place, that none of those parties were before the court, or their supposed rights in any way presented in the pleadings for adjudication; and we call special attention to the fact that the Lovettsville Council, though a corporation under the laws of Virginia, was not a party to this cause nor its rights or interests in any way set forth or referred to in any pleading in the cause.

The points made in the opposing brief are stated so generally, and many of them so intermingled with others, that it is difficult to consider and answer them separately; but we think all of them are answered by one or more of the following considerations:

(1) Many of the points, however they might deserve consideration in connection with the constitution of the State, show no conflict with the federal constitution; and, therefore, have raised no federal question.

(2) So far as the points made raise a federal question, they were correctly decided.

(3) Many of the points are not raised by the pleadings, nor involved in the issues, nor adjudicated by the decree of the court below.

(4) Some of the points are sought to be raised by persons having no interest in them; the persons affected by them, if they are sound, not being even parties to the cause.

We have not in the limited time for reply deemed it necessary to discuss the authorities referred to by opposing counsel. Many of them were cited and considered in the court below; and we think none of them will be found to have any important bearing on this case adverse to the decision of the court below.

In conclusion, we beg to refer to the able and learned opinion of the Supreme Court of Appeals of Virginia rendered by its president, and to be found in the Record on pages 148 to 154, for

the reasoning and authorities upon which that court based its decision.

We ask that this brief may be received and read as a part of our brief heretofore filed in this cause on October 27, 1906.

Respectfully submitted,

SAMUEL A. ANDERSON.

FRANK W. CHRISTIAN,

Counsel for Defendant-in-error.

October 27th, 1906.

Supreme Court of the United States.

No. 89.—October Term, 1906.

The National Council of the Junior Order of United American Mechanics of the United States of North America, et al., Plaintiffs in Error,

vs.

The State Council of Virginia, Junior Order of United American Mechanics of the State of Virginia.

In Error to the Supren Court of Appeals of th State of Virginia.

[November 19, 1906.]

Mr. Justice Holmes delivered the opinion of the Court.

This is a writ of error to reverse a decree in favor of the defendant i error, the original plaintiff, and hereinafter called the plaintiff. 104 V 197. The plaintiffs in error will be called the defendants. The plaintiff a Virginia corporation. The principal defendant is a Pennsylvania corp ration. The other defendants are alleged to be officers of a voluntary ass ciation, calling itself by the plaintiff's name, and are acting under a charte from the Pennsylvania corporation. The latter was incorporated in 189 the articles of association reciting that the associates comprise the Nation Council, the supreme head of the Order in the United States, (where previously had existed as a voluntary association.) Its objects were promote the interests of Americans and shield them from foreign compet tion, to assist them in obtaining employment, to encourage them in busines to establish a sick and funeral fund, and to maintain the public scho system, prevent sectarian interference with the same, and uphold the rea ing of the Holy Bible in the schools. As the result of internal dissensio the Virginia corporation was chartered in 1900, with closely similar object omitting those relating to the public schools. It seems to have consiste of the dominant portion of a former voluntary State Council of the sam name, from which a charter issued by the Pennsylvania corporation ha been withdrawn. The act of incorporation declared that the new bod "shall be the supreme head of the Junior Order of the United America Mechanics in the State of Virginia," and provides that it "shall have fu and exclusive authority to grant Charters to subordinate Councils, Junio Order United American Mechanics, in the State of Virginia, with powe to revoke the same for cause." The plaintiff and the voluntary organiza tion of the defendants both have granted and intend to grant charters t

subordinate Councils in Virginia, and are obtaining members and fees which each would obtain but for the other, and are holding themselves out as the only true and lawful State Council of the Virginia Junior Order of United American Mechanics.

The plaintiff sued for an injunction, and the defendants, in their answer, asked cross relief. The plaintiff obtained a decree enjoining the defendant corporation and the other defendants, (declared to be shown by their answers to be its agents and representatives,) as officers of the Virginia voluntary association, from continuing within the State the use of the plaintiff's name or any other name likely to be taken for it; from using the plaintiff's seal; from carrying out under such name the objects for which the plaintiff and the Virginia voluntary association were organized; from granting charters to subordinate Councils in the State as the head of the Order in the State; from interfering in any way with the pursuit of its objects by the plaintiff within the State; and from designating their officers within the State by applications set forth as used by the plaintiff. On appeal the decree was affirmed, with a modification, merely by way of caution, providing that nothing therein contained should, in anywise, interfere with any personal or property rights that might have accrued before the date of the Virginia charter. The defendants had set up in their answer and insisted that the charter impaired the obligation of the contract existing between the plaintiff and the principal defendant, contrary to Article 1, Section 10, of the Constitution, and also violated Section 1 of the Fourteenth Amendment, and they took a writ of error from this Court.

The bill and answer state the two sides of the difference which led to the split, at length. But those details have no bearing that needs to be considered here. The only question before us is the constitutionality of the Act of the Virginia Legislature granting the charter. The elements of that question are the appropriation of the name of the previously existing voluntary society and the exclusive right of granting sub-charters in Virginia conferred by the words that we have quoted. Whether the persons who were using that name when they got themselves incorporated were using it rightly or wrongly does not matter if the Legislature had the right to grant the name to them in either case. On the other hand, we do not consider the question stated to be disposed of by the limitation put upon the decree by the Supreme Court of Appeals. Unless the saving of personal and property rights existing at the date of the charter be read as a construction of the charter, it does not affect the scope or validity of the Act. And if so read, still it cannot be taken to empty the specific prohibitions in the decree of all definite meaning and to leave only an indeterminate injunction to obey the law at the defendants' peril. That in-

junction remains, and imports what the words of the charter import, that the plaintiff has been granted certain defined exclusive rights which the Court will enforce.

The decree, however, goes beyond the rights which we have mentioned as given by the charter. In that respect the discussion here must be limited again. Whether the plaintiff is using paraphernalia, or a ritual, or a seal, which it should not be allowed to use, is not before us here. The charter says nothing about them, and its validity is not affected by any abuse of rights of property or of confidence which the plaintiff or its members may have practised. This Court, we repeat, cannot go beyond a decision upon the constitutionality of the charter granted, and we address ourselves to that.

The contract of which the obligation is alleged to have been violated is a contract between the plaintiff and the principal defendant. What that contract is supposed to have been is not stated, but manifestly there was none. It would have had to be a contract not to come into existence, at least with the plaintiff's present functions and name. There have been cases where administration was taken out on a prematurely born child and a suit brought for causing it to be born, *per quod* it died, but they have failed. *Dietrich* v. *Northampton*, 138 Mass. 14. See *Walker* v. *Great Northern Ry. Co. of Ireland*, 28 L. R. Ir. 69. An antenatal contract presents greater difficulties still. Even if we should substitute an allegation of a contract with the members of the plaintiff, the contention would fail. The contract, if any there was, was not that they would not become incorporated, but must be supposed to be that they would retain their subordination to the National Council, or something of that sort. It is going very far to say that they contracted not to secede, but whether they did so or not, it was a matter outside the purview of the charter. There was nothing in that to hinder their returning to their allegiance. Whether any, and, if any, what contract was made, (*National Council, Junior Order United American Mechanics* v. *State Council*, 64 N. J. Eq. 470, 473; 66 N. J. Eq. 429,) and whether, if made, it must not be taken to have been made subject to the powers of the State, with which we are about to deal, are questions which we may pass. See *Pennsylvania College Cases*, 13 Wall. 190, 218. *Bedford* v. *Eastern Building & Loan Association*, 181 U. S. 227.

The most serious aspect of the defence is presented by the matter of the plaintiff's name. If the legislation of a State undertook to appropriate to the use of its own creature a trade name of known commercial value, of course the argument would be very strong that an act of incorporation could not interfere with existing property rights. And no doubt within proper limits the argument would be as good for a foreign corporation as for a foreign person. But that is not what has been done in this case.

The name in question is not the name of the principal defendant, but distinguished from that name as State and National Councils no doubt generally are distinguished by members of similar institutions. It is the name of a voluntary association of which the officers are defendants. But it is not used even by that association in its own right, but only under a charter from, and in the right of, the Pennsylvania corporation. Furthermore, the name is not associated with a product of any kind. Its only value to the defendants, in a property sense, is as tending to invite membership in a club which professes to derive its existence and its powers from the Pennsylvania company. It does not seem likely that any one would join the plaintiff, and certainly no member could be retained, in ignorance of its alienation from the National Council. As the National Council has its branches elsewhere, and as the plaintiff is on its face a State organization, competition outside the State appears improbable. So that the claim of the defendants comes down to a claim of right to compete within the State, and a right, as we have said, of or in behalf of the Pennsylvania corporation, which controls the existence of its subordinate Virginia Councils. Thus the question as to the grant of the name passes over into the question as to the exclusive right of the plaintiff to issue charters which was the other legislative grant.

The Supreme Court of Appeals was right, therefore, in treating the constitutional question as depending on the power of the State with regard to foreign corporations. That must decide the case. Now it is true, of course, that an unconstitutional law no more binds foreign corporations than it binds others. *Carroll* v. *Greenwich Ins. Co.*, 199 U. S. 401, 409. And no doubt a law specially directed against a foreign corporation might be unconstitutional, for instance, as depriving it of its property without due process of law. See *Blake* v. *McClung*, 172 U. S. 239, 260. But when the so-called property consists merely in the value that there might be in extending its business or membership into a State, that property, it hardly needs to be said, depends upon the consent of the State to let the corporation come into the State. The State of Virginia had the undoubted right to exclude the Pennsylvania corporation and to forbid its constituting branches within the Virginia boundaries. As it had that right before the corporation got in, so it had the right to turn it out after it got in. *Security Mutual Life Ins. Co.* v. *Prewitt*, 202 U. S. 246. It follows that the State could impose the more limited restriction that simply forbade the granting of charters to "subordinate Councils, Junior Order United American Mechanics, in the State of Virginia."

It is argued that the power of the State in this case was less than it otherwise might have been because it did not turn the Pennsylvania corpo-

ration out. The Supreme Court of Appeals says that the plaintiff's charter leaves the whole order of things as it existed unaffected except by the exclusive right of the plaintiff to issue subordinate charters. It is said that the general statutes recognized the defendant and authorized such associations to continue within the State. A subordinate Council of the Order had been granted a special charter which is not revoked. The conclusion is drawn that the restrictions upon the defendant which flow from the charter to the plaintiff amount to a denial of the equal protection of the laws of Virginia to a person within its jurisdiction. But the power of the State as to foreign corporations does not depend upon their being outside of its jurisdiction. Those within the jurisdiction, in such sense as they ever can be said to be within it, do not acquire a right not to be turned out except by general laws. A single foreign corporation, especially one unique in character, like the National Council, might be expelled by a special act. It equally could be restricted in the more limited way.

There were many difficult questions presented to the State Court which can not be reviewed here. As to the constitutionality of the plaintiff's charter we are of opinion that the Court was right.

Decree affirmed.

True copy.

Test:

Clerk Supreme Court, U. S.